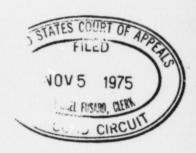
United States Court of Appeals for the Second Circuit



APPENDIX

75-7504



United States Court of Appeals

For the Second Circuit

Docket No. 75-7504

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Plaintiffs-Appellees,

against

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALD-WELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO,

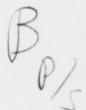
Defendant-Appellant.

JOINT APPENDIX

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RELEVANT POCKET ENTRIES

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN, and JOHN HAYES, each of them individually and on behalf of all other members or INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Plaintiffs,

-against-

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALDWELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO,

Defendant.

RELEVANT DOCKET ENTRIES

Complaint was filed March 31, 1970; defendant's Answer was filed April 17, 1970. Plaintiffs' motion for summary judgmert was denied (MacMahon, D.J.) by Memorandum and Order filed November 9, 1970. Note of Issue was filed November 23, 1970.

Pre-Trial Order was filed April 13, 1972. The case was tried (non-jury) before Hon. Whitman Knapp, D.J., on January 8 and 9, 1973. Judge Knapp's Oral Opinion and Decision handed down January 9, 1973. Findings and Conclusions filed January 19, 1973 (submitted by defendant). Judgment filed January 19, 1973.

Plaintiffs' Notice of Appeal filed February 16, 1973. The record was docketed in this Court on May 17, 1973.

Opinion of U.S. Court of Appeals for the Second Circuit reversing the Judgment of Judge Knapp and remanding the case handed down May 28, 1974. Opinion amended June 13, 1974.

Trial continued and concluded before Judge
Knapp (non-jury) on July 2, 1975. Judgment in favor of
Plaintiffs entered August 8, 1975.

Defendant's Notice of Appeal filed August 28, 1975.

RELEVANT PORTIONS OF FRE-TRIAL ORDER

(Caption Omitted)

- 3. (a) The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):
- (1) Defendant INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, is a labor organization within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 401, et seq.
- (2) Plaintiffs are and at all relevant times have been members in good standing of defendant.
- (3) In or about March 1968, defendant's then-president appointed a Constitutional Advisory Committee.
- (4) The aforesaid Constitutional Advisory Committee prepared certain proposals for the restructuring of defendant labor organization, including a proposal to consolidate the various local unions affiliated with defendant into several divisions. These proposals were published in the defendant's official newspaper in its March 1958 issue. A copy thereof is available to the Court and will be offered in evidence.
- (5) The defendant's official rewspaper, entitled THE MASTER, MATE & PILOT, is published and mailed we each member's home address; supplies thereof are also sent to ships on which members are employed,

to each local union office, and to various recreation centers overseas.

- (6) A proposal for the consolidation of local unions into divisions as recommended by the Constitutional Advisory Committee was put before defendant's International Convention in May 1968. At the convention's direction the same was sent out for advisory referendum vote to the members, being denominated as Proposition "A" on the 1968 election ballot of defendant. The ballot containing such proposition is available to the Court and will be offered in evidence.
- (7) Proposition "A" received an affirmative vote of approximately 5-2 in the advisory referendum vote.
- (8) In December 1968, defendant's International Executive Board voted to convene a constitutional convention in September of 1969. A report on the vote and convening of such convention was printed in the January 1969 issue of THE MASTER, MATE & PILOT, which report is available to the Court and will be offered in evidence.
- (9) The constitutional convention met in September 1969 and proposed certain constitutional amendments and also a description of a proposed structure for an Offshore Division. These proposals were reported and printed in the October 1969 issue of the MASTER, MATE & PILOT, which document is available to the Court and will be offered in evidence.
- (10) In or about January 1970, certain persons, members of defendant, prepared a certain document referred to herein as the "new"

constitution, which document is available to the Cart and will be offered in evidence.

- (11) The constitutional convention reconvened on January 25, 1970 and continued in session until January 31, 1970.
- (12) On January 31, 1970, the document described above as the "new" constitution was submitted to the defendant's convention for approval.
- many and various proposed amendments to defendant's pre-existing constitution, changing defendant's organizational and dues sctructure in various ways and increasing the rates of dues payable by more than one-half of defendant's members.
- (14) The defendant's pre-existing constitution provides and provided that it may be amended by a two-step procedure: the first step being approval at a convention and the second being approval by the membership in a referendum.
- January 31, 1970, a delegate raised a point of information as to whether the separate provisions of the "rew" constitution would be voted upon seriatim or separately and the Chairman, defendant's International President, ruled that it would not but instead the entire document would be voted upon as a single package.
- (16) The "new" constitution was put to a vote at the convention as a single package and was approved by more than two-thirds vote.

- (17) During the convention, defendant's International President announced that a committee comprised of the executive officers or their designees of each offshore local would meet after the close of the convention for the preparation of Offshore Division by-laws.
- (13) After the convention had dissolved itself, the committee that defendant's International President had announced as aforesaid did meet and prepared a second document referred to as the "Offshore Division" by-laws, which document is available to the Court and will be offered into evidence.
- (19) The "Offshore Division" by-laws were not submitted for approval to any further convention of defendant.
- (20) The defendant's constitutional convention in January 1970 elected a ballot committee and designated the firm of Lybrand, Ross Bros. & Montgomery as balloting agency.
- (21) In or about February 1970 (after the constitutional convention had dissolved itself) defendant distributed to the executive officer of each local union a copy of the proposed "new" constitution in mimeographed form. At or about the same time, defendant also distributed a mimeographed copy of the proposed "Offshore Division" by-laws to the executive officer of each officer local.
- (22) On February 23, 1970, defendant sent a letter to every one of defendant's more than 11,000 members, at defendant's expense, bearing defendant's official letterhead, and over the signatures of defendant's three International Officers, which letter is annexed as Exhibit A to the affidavit of Lloyd Sheldon, sworn to the 22nd day of

July, 1970 and previously submitted to this Court, and will be offered into evidence.

- (23) On or about February 25, 1970, March 1, 1970 and March 2, 1970, letters, copies of which are annexed to the affidavit of Lloyd Sheldon sworn to the 22nd day of July 1970 and on file in this case, as Exhibits C, D and E thereof, were sent to the principal officers of defendant by the persons indicated in the said letters and were received in the offices of defendant shortly thereafter.
- (24) The Baltimore printing firm of Worth, Strahler & Son were retained to print the envelopes, ballots and International Constitution and Offshore Division by-laws.
- (25) A ballot containing spaces for "YES" or "NO" voted to the proposed "new" constitution was sent to each member of defendant. The ballot set to each offshore member of defendant also included spaces for "YES" an "NO" votes to the proposed "Offshore Division" by-laws. Copies of the ballot are available to the Court and will be offered in evidence.
- a printed booklet containing the text of the proposed "new" constitution and to each offshore member a second booklet, containing the text of the proposed "Offshore Division" by-laws. Copies of these booklets are available to the Court and will be offered in evidence.
- (27). The ballots sent to members as aforesaid called for them to vote "YES" or 'NO" to the proposed "new" constitution as a

single package. There was no way permitted by the form of the ballot or by the way in which the referendum was carried out for a member to vote for one or more of the constitutional amendments contained or implied in it and against others. Specifically, there was no way for a member to vote against the dues increase and for any of the various constitutional amendments contained in the processed "new" constitution.

- (28) On or about March 9, 1970, defendant published the March 1970 issue of its official journal. The publication contained the text of the proposed "new" constitution and of the "Offshore Division" by-laws. It also contained statements from each of the three International Officers, all advocating approval of the proposed "new" constitution, and a reprint of the letter of February 23, 1970, described above. A copy of the said official journal will be available to the Court and may be introduced into evidence.
- (29) Plaintiffs were not given space in the International newspaper of the defendant and were not given an International mailing
- (30) On or about May 20, 1970, defendant published the May

 1970 issue of its official journal, the same being the first issue to

 be published by defendant since its March 1970 issue. A copy of the

 said issue is available to the Court and may be introduced in evidence.
- (31) Neither any of the documents published by defendant as
 described above nor any other documents or written statements officially
 disseminated or published by detendant or by any of its officers

any time during the course of the referendum contained any statement or article by any of the plaintiffs or by any person opposed to adoption of the proposed "new" constitution, nor did any publication of defendant contain any statement from any officer of Local 33 regarding the referendum nor did any publication of defendant advise members that Local 38's entire delegation at the convention had voted against the proposed "new" constitution.

- any issue of the defendant's official journal except in the document itself or where the same was reprinted, has defendant or any officer of defendant advised the membership that the proposed "new" constitution provides for the three International Officers to become, by virtue of their International offices, the three chief officers of the "Offshore Division" and of every other division of defendant and/or that it further provides that the three International Officers shall have the power to vote on behalf of fifty percent of the "Offshore Division's" membership on defendant a General Executive Board; nor in any publication (other than the text of the document itself) has defendant or any of its officers advised the membership of these facts during or prior to the period of the referendum.
- (33) The referendum was conducted by mail, over a three-month period beginning in March 1970 and ending in June 1970. The announced result showed that the "new" constitution was approved by a vote of 2,781 for and 2,602 against; and that the "Offshore Division" by-laws were approved by a vote of 2,206 for and 2,113 against.

(Pre-Trial Order)

- (34) Plaintiffs allege that they have appealed to the International Executive Committee of the defendant. Defendant denies that plaintiffs have duly appealed to the International Executive Committee, but defendant will not raise the legal defense that plaintiffs have failed to exhaust their administrative remedies.
- (35) Since the institution of this action, the "new" constitution and "Offshore Division" by-laws have gone into effect.

* * 1

PRIOR OPINION OF COURT OF APPEALS - May 28, 1974

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Cal. No. 841-September Term, 1973.

Docket No. 73-1744

(Argued April 11, 1974

Decided May 28, 1974.)

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of International Organization of Masters, Mates and Pilots, AFL-CIO, similarly situated,

Plaintiffs-Appellants,

V.

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or William M. CALD-WELL, as Vice President, of International Organization of Masters, Mates and Pilots, AFL-CIO,

Defendant-Appellee.

Before:

FRIENDLY and TIMBERS, Circuit Judges, and Thomsen, District Judge.

Plaintiffs-Appellants, members of the International Organization of Masters, Mates and Pilots, AFL-CIO, brought this action in the Southern District of New York against the three International officers of the union for an

Of the District of Maryland, sitting by designation.

injunction preventing a new union constitution from becoming effective. They app al from an adverse judgment entered by Judge Knapp at the close of plaintiffs' case.

Reversed and Remanded.

Burton H. Hall, New York, New York, for plaintiffs-appellants.

MARVIN SCHWARTZ, New York, New York, for defendant-appellee.

THOMSEN, District Judge:

Plaintiffs, members of the International Organization of Masters, Mates and Pilots, AFL-CIO (the union), brought this action in the district court against the three International officers of the union for an injunction preventing a new union constitution from becoming effective. They appeal from an adverse judgment entered at the close of plaintiffs' case.

Plaintiffs argued below and argue here that defendants, as officers of the union, infringed the rights of plaintiffs and other members of the union under § 101 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411, and under the old constitution of the union, (1) by not permitting separate votes on the various provisions of the new constitution, which included an increase in dues and an enlargement of the powers of the defendant officers, but requiring a single "yes" or "no" vote on the adoption of the new constitution; and (2) by publishing allegedly misleading information about the new constitution and refusing to permit plaintiffs either (a) to state their objections to the new constitution in the union newspaper, or (b) to have access to the union's mailing list or to have the list made available to a mailing service se-

lected by defendants, so that plaintiffs could transmit their views to the other members of the union before or during the voting period.

The stipulated facts and other evidence show that before 1968 the union consisted of largely autonomous local unions, although its collective bargaining agreements were negotiated on an industry-wide basis. In response to suggestions to eliminate the local unions and consolidate their powers and responsibilities into divisions which corresponded to the bargaining patterns in the industry (i.e., offshore, inland, governmental employees and pilots), plaintiff Sheldon, who was then International President, appointed a Constitutional Advisory Committee.1 That committee prepared proposals for restructuring the union, including a proposal to consolidate the local unions into divisions. Those proposals were published in the March 1968 issue of the union newspaper, which is mailed to each member's home address, to the ships on which members are employed, to each local union, and to recreation centers overseas.

The committee's proposals were put before the International convention held in May 1968. The convention decided to hold an advisory referendum of the entire membership on the issue of restructuring the union through consolidation of locals into divisions. The advisory referendum approved the principle of restructuring and consolidation by a vote of about five to two.

In December 1968 the International Executive Board voted to convene a special constitutional convention to be held in September 1969. The result of the advisory referendum and the decision to convene a constitutional convention were reported in the January 1969 issue of the union

¹ Sheldon was thereafter defeated in his bid for reelection by the current President, defendant Thomas F. O'Callaghan.

newspaper. The constitutional convention met in September 1969. It proposed attain constitutional amendments and a description of a proposed structure for an Offshore Division and other division. These proposals were published in the October 1969 issue of the union newspaper.

The convention on January 26, 1970, to consider a draft of a proposed new constitution, which contained a variety of amendments to the then-existing constitution. It "consolidated" all local unions of the sea-going members, who comprise some 8,000 of the union's total membership of 10.000, into a nation-wide Offshore Division, and created other nation-wide divisions for non-seagoing members. It changed the union's dues structure in various ways and increased the rates of dues payable by more than half of the union's members. It raised the salaries of the two top International officers, and provided for a new, \$35,000 salary for a third, previously unsalaried International officer. It greatly increased the power of the three International officers by providing that those three officers were to become the three top officers of each division, including the Offshore Division, and by virtue of being the three top officers of the Offshore Division would be able to cast one-half of the weighted vote of the Offshore Division on the General Executive Board of the union.

The pre-existing constitution provided that it might be amended by a two-step procedure: approval at a convention and, thereafter, approval by the membership in a referendum.

At the session of the constitutional convention on January 31, 1970, a delegate raised a point of information as to whether the separate provisions of the "new" constitution would be voted upon seriatim or separately; the Chairman (defendant O'Callaghan, the International President) ruled that the entire document would be voted upon as a single package. The proposed constitution was put to a

vote at the convention and was approved by a more than two-thirds vote.

During the convention, the International President announced that a committee composed of the executive officers (or their designees) of each offshore local would meet after the close of the convention for the preparation of Offshore Division by-laws. After the convention had dissolved, that committee met and drafted a set of by-laws for the Offshore Division.

During February 1970 a copy of the proposed constitution was sent to the executive officer of each local union and a mimeographed copy of the proposed Offshore Division by-laws was sent to the executive officer of each offshore local. The referendum was to be conducted by mail, over a three month period beginning in March 1970 and ending in June 1970. All mentions were to vote on the adoption of the proposed constitution; all offshore members were to vote on the adoption by-laws.

One of the provisions of the proposed constitution was widely publicized by cofendants before and during the referendum; that was the provision which would consolidate all sea-going local unions into one division—a popular proposal.

On February 23, 1970, the three International officers sent a letter to each member of the union summarizing what they described as the "high points" of the proposed constitution and urging its adoption.² The March 9, 1970

The letter referred not only to the consolidation of local unions, but to at least seventeen other provisions in the new constitution. These included such matters as "Closing of membership rolls until a reasonable membership/job relationship exists", liberalization of qualification for elective office, annual conventions, reduction in terms of elective office, disciplinary procedural changes, recall of officers, and obtaining a national pension and welfare plan. On the question of a dues increase, the letter stated: "The dues for the Offshore Division calls for an in-

issue of the union newspaper published the text of the proposed new constitution in full, and reprinted the February 23 letter of the International officers.

Shortly after receiving the February 23 letter plaintiffs, individually and as members of a committee elected by Local 88 to oppose the new constitution, asked for an opportunity to express their views to the membership of the union, either by space in the union newspaper, by use of the union's mailing list, or through an independent mailing service designated by the International office, at the cost of the plaintiffs. Their requests were ignored or denied. On the other hand, defendants repeatedly published material favoring the new constitution. In addition to reprinting the February 23 letter on the back page of the March 1970 issue of the union newspaper, the International officers published, in the two issues of the paper which appeared during the referendum period, a substantial amount of material advocating approval.

A ballot containing spaces for a "yes" or "no" vote on the proposed new constitution was sent to each member of the union, together with a booklet containing the text of the proposed constitution. Each offshore member also received a second booklet, containing the text of the proposed Offshore Division by-laws, on which their ballots called for "yes" or "no" votes.

crease. Inland dues remain the same. For the past several years the initiation fees have paid over thirty-five percent of the International expenses. Income from initiations will cease until the membership/job ratio is realized. The necessity of a dues increase is obvious."

Neither the letter of February 23 nor any other letter to the membership nor any issue of the union newspaper contained any discussion of the proposal to make the three International officers automatically the three top afficers of all divisions, or f the proposal to give the three International officers half the weighted vote on the General Executive Board of the Offshore Division. Nor did the union, or any of its officers, publish any statement or article by any opponent of the proposed constitution.

The ballots were counted in June 1970. The new constitution was approved by a vote of 2,781 for and 2,602 against; the Offshore Division by-laws were approved by a vote of 2,206 for and 2,113 against. The new constitution and Offshore Division by-laws went into effect after plaintiffs filed this action.

(1) Plaintiffs' first argument is that the defendants infringed their rights and the rights of other members of the union under § 101 (a) (1) and (3) of the LMRDA, 29 U.S.C. 411 (a) (1) and (3),3 and under the old constitution, by not permitting separate votes on the various provisions of the new constitution; particularly, they object to not having been able to vote on the dues increase and the erlarged powers of the International officers separately from the consolidation of the local unions, which plaintiffs and most union members favored.

^{§ 101 (}a) (1) provides: "Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

^{§ 101 (}a) (3) provides that dues shall not be increased except:

^{... . .}

[&]quot;(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

Plaintiffs rely on Sertic v. Cuyahoga, Lake, Geauga & Ashtabula Cos., C.D.C., 423 F.2d 515 (6 Cir. 1970), where the court held that a referendum that resulted in an increase in dues, in which the ballot gave a member no opportunity to vote against such increase without also voting against negotiations for a wage increase, was a violation of the LMRDA. The Sixth Circuit stated that free participation in union government "necessarily would include the right to vote 'yes' or 'no' on increases of dues or assessments without coercion. * * * Union members are entitled under the Act to the right of a meaningful vote on increases in dues or assessments". (p. 521). We do not disagree with the principles stated in Sertic, but we conclude that those principles did not require the union in the instant case to submit for a separate vote each of the many interrelated provisions of the proposed new constitution. The adoption of some of those provisions and the rejection of others might have resulted in an unworkable document, and thrown the operation of the union into confusion.4

Nor is there any merit in plaintiffs' contention that the old constitution required a separate vote on the various provisions of the proposed new constitution which differed from the provisions of the old.

(2) Plaintiffs also argue that defendants deprived them of their rights under § 101 (a) (1) of LMRDA, 29 U.S.C. 411 (a) (1), and under the old constitution of the union, by publishing misleading information about the new constitution and refusing plaintiffs' repeated requests for permission either to state their objections to the new constitution

The district court found: "The Union, and particularly the Convention delegates responsible for drafting the new Constitution to be submitted to the membership, could reasonably have concluded that the dues increase for offshore members was related to the restructuring and consolidation of the Union provided for in the new Constitution, including the limitation on new members."

in the union newspaper, or to have access to the union's mailing list, or to have the list made available to a mailing service selected by defendants, so that plaintiffs could transmit their views to the other members of the union before or during the voting period.

The purpose of the LMRDA was stated by Chief Judge Lumbard in *Navarro* v. *Gannon*, 385 F.2d 512, 518 (2 Cir. 1967), as follows:

"The LMRDA was enacted with the clear purpose of assuring 'the full and active participation by the rank and file in the affairs of the union.' American Federation of Musicians v. Wittstein, 379 U.S. 171, 182-183, 85 S.Ct. 300, 307, 13 L.Ed.2d 214 (1964). The Congress by passing a 'Bill of Rights' for union members determined that the efficiency of a monolithic union under autocratic rule was gained at too great a price if it necessitated any sacrifice in the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union responsive to the rights of all its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values in the labor movement."

In Schuchardt v. Millwrights & Mach. Erecto & Loc. U. No. 2834, 380 F.2d 795, 797 (10 Cir. 1967), the court said: "The basic purpose of the 'bill of rights' * * * is to assure to union members a basically democratic union organization with concomitant protections against arbitrary and despotic control by union leaders." As Professor Cox put it: "An individual worker gains no human rights by substituting an autocratic union officialdom for the tyranny of the boss. Only a democratic union, sensitive to the rights of minorities, can help men to achieve the ideals of indi-

vidual responsibility, equality of opportunity, and self-determination.⁵

On the other hand, the provisions of the LMRDA were not intended to constitute an open invitation to the courts to intervene in the internal affairs of a union. See *Gurton* v. *Arons*, 339 F.2d 371, 375 (2 Cir. 1964).

Former Representative, now Senator Griffin recently wrote: "Congress sought to strike a balance between rights for individual members and the recognized institutional requirements necessary for a union to be an effective bargaining force." ⁶

This court recognizes the need to exercise what Judge Wisdom referred to as a "sound reluctance * * * to interfere in internal union affairs". Allen v. International Alliance of Theatrical, etc., 338 F.2d 309, 317 (5 Cir. 1964). However, the court also recognizes its duty to protect the fundamental rights of individual members against "arbitrary and despotic control by union leaders". Schuchardt v. Millwrights & Mach. Erectors Loc. U. No. 2834, supra.

Plaintiffs complain because defendant officers emphasized popular features of the proposed constitution while ignoring or playing down other features which would have been unpopular with many of the members. The duly elected officers of a union have a right and a responsibility to lead, and to give the members the benefit of their advice on questions that arise. They have a right to use the union

⁵ Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 610 (1959).

⁶ Griffin, The Landrum-Griffin Act: Twelve Years of Experience in Protecting Employee Rights, 5 Ga. Law Rev. 622 (1971).

Plaintiffs also sent copies of the proposed constitution to all members and copies of the proposed Offshore Division by-laws to all offshore members. The union was composed of persons who were sufficiently well educated to serve as masters, mates and pilots, and who presumably could read and understand those documents.

publications to express their views, and are not ordinarily required to give space therein to the expression of contrary views, provided they do not interfere improperly with whatever rights members may have to communicate their views to other members.

The new constitution contains a provision that:

- "h) Every member shall have the right to:
- "1) Circulate petitions on union policy.
- "2) Publish and distribute leaflets, newspapers and all other written material or present his opinions through other media.

The old constitution contained no similar provision, but that does not end the matter.

The old constitution provided for a referendum in which all members in good standing were eligible to vote. The International officers had a duty under the LMRDA to conduct a fair referendum, and that obligation should be erforced by the courts. No special expertise in union affairs is required; for more than a hundred years courts have been dealing with similar rights of members of unincorporated associations. See Chaffee, The Internal Affairs of Associations Not for Prof. 3 Harv. L. Rev. 993 (1930); Developments in the Law: Judicial Control of Actions of Private Associations, 76 Harv. L. Rev. 985 (1963).

The majority rule concept is at the center of our federal labor policy. Because of that policy the Supreme Court has found it necessary to fashion the duty of fair representation. For the same reason Congress enacted a code of fairness to assure democratic conduct of union affairs. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967).

A fair referendum under the facts of this case included the right of members whose views were opposed to defendants' to have an opportunity to present their views to other members of the union. This was particularly true in the case of plaintiffs, who were members of a committee appointed by a large local to present the views of that local to other members of the union.

We do not hold that defendants were required to give plaintiffs space in the union newspaper to present their views. Whether plaintiffs were entitled to a list of the membership is a more troublesome question, since there are reasons why a union may not wish to take the risk of its membership list falling into the wrong hands. It is not necessary to decide that question in this case, because plaintiffs made an alternative proposition, namely, to pay the expenses of having their views sent to the other members of the union through a mailing sentice selected by a fendants.

We conclude that the LMRDA, interpreted in the light of established legal principles, required defend at to make the list of members of the union available to a mailing service chosen by defendants so that plaintiffs could send a letter to all members expressing their views and the view of their local on the issues involved in the referendum.

The California courts have held that apart from the LMRDA, the members of a union have a right to inspect the union's books and records for a proper purpose, and one California court has indicated that this rule applies to lists of members. See Mooney v. Bartenders Union Local No. 284, 48 Cal. 2d 841. 313 P.2d 857, 64 A.L.R.2d 1.54 (1957); Hod Carriers Local 89 v. Young, 42 L.C. 61,641 (Cal. Super. Ct., San Diego, 1961). Labor's Bill of Rights was not intended to narrow the rights of union members.

⁹ Neither Calhoon v. Harvey, 397 U.S. 134 (1964), nor Robins v. Rarback, 325 F.2d 925 (2 Cir. 1963), cert. denied, 379 U.S. 974 (1965), is directly applicable to this case, since they involved union elections rather than referendums. Title IV of the LMRDA provides detailed procedural safeguards for union elections, and the Calhoon Court held that the exclusive remedy for protecting those election rights was through a post-election suit by the Secretary of Labor. Of course, those cases and Gurton v. Arons, 339 F.2d 371 (2 Cir. 1964), a referen-

The judgment must be reversed. What relief is approte, however, cannot be decided by this court on the pent record. The case will, therefore, be remanded to the district court to fashion such relief as may be most fair and equitable under all the circumstances.

Reversed and Remanded.

dum case, strongly suggest that courts should be reluctant to interfere with internal union affairs absent specific statutory license. In this case, however, the defendant union officials' stiff-necked refusal even to provide their opponents access to the membership mailing list rendered the referendum procedure so patently unfair that their conduct can fairly be deemed "a denial of the [members'] equal right to vote in elections or referendums," Gurton v. Arons, supra, 339 F.2d at 374.

Unit: States Court of Appeal

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United State Court House, in the City of New York, on the thirteenth day of June , one thousand nine hundred and seventy-four

Present:

Hon. Henry J. Friendly, U.S.C.J.

Hon. William H. Timbers, U.S. J.

Hon. Roszel C. Thomsen, U.S.D.J.

xCirmit Judges.

Lloyd Sheldon et al.

-against-

No. 73-1741

Thomas F. O'Callaghan et al.

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Upon consideration by the panel:

The opinion in the above entitled case, now in slip skeat form, is amended as follows:

At slip op. p. 3764-65, the last two paragraphs of the opinion are deleted, and the following is added:

We conclude that, on the evidence as it stood at the time defendants' motion to dismiss was granted, the LMRDA, interpreted in the light of established legal principles, required defendants to make the list of members of the union available to a mailing

AMENDMENT TO COURT OF APPEALS OPINION

service chosen by defendants so that plaintiffs could send a letter to all members expressing their views and the view of their local on the issues involved in the referendum.

Defendants state, however, that if their motion to dismiss had not been granted, they would have presented evidence that a newspaper published by plaintiffs' local union was widely distributed among the union membership, and that plaintiffs' views were in fact being disseminated.

The judgment must be reversed, and the case remanded for further proceedings consistent with this opinion.

Reversed and Remanded.

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TRANSCRIPT OF PROCEEDINGS January 8 and 9, 1973 (EXCERPTS)

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local asked them to do something to oppose the constitution.

want and immaterial. First of all, the class action allegations have no part in this lawsuit. It loesn't matter how many manbers were opposed.

MR. HALL: I don't know what Mr. Waldman means when he says the class action has nothing to do with this case. It is a class and was brought as a class action.

MR. WALDMAN: I would suggest that the class action allegations are legally irrelevant and immaterial, whether one member, five member, fifty or one hundred oppose the new constitution or wish to do something about it, the numbers are of no concern.

MR. HALL: You concede the sufficiency of the class?

MR. WALDMAN: No, I concede the relevance of the class.

THE COURT: I don't see the relevance, but we will take it.

[Plaintiffs Exhibit 3 received in evidence.]

- Q Did the committee thereafter send a letter to the International office, to your knowledge?
 - A Yes.
 - Q I hand you Exhibit 6 for identification and ask

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you if that is a copy of that letter?

MR. HALL: I am now introducing a series of letters referred to collectively in the memo, letters sent by the plaintiffs requesting an opportunity to have material expressed in the official journal.

THE COURT: The ones referred to in paragraph 23? MR. WALDMAN: And in paragraph 4A of the exhibits, it is Roman seven.

THE COURT: Who do you have this witness identify them?

MR. WALDMAN: Your Honor, we reserve objections and the authenticity is not challenged. We have in effect stipulated that they were sent by plaintiffs or one or more of them.

We object to the relevancy and materiality for the ground I have stated with respect to the stipulated facts.

They deal with demands upon the union for access of the membership to the union newspaper. Since there was no duty to provide such under the law, we urge that they are irrelevant and immaterial.

MR. HALL: You do acknowledge authenticity. I suggest then I introduce what comes to Exhibit 6 through 10 and ask that they be accepted.

MR. WALDMAN: And our objection applies to all of

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them.

THE COURT: They will all be received as subject to the objection noted and the relevance will ruled upon.

MR. HALL: That they are what they appear to be, namely letters sent at the times indicated.

MR. WALDMAN: That is correct. If you will just bear with us we would like to get a listing of the exhibits aligned properly.

[Pause]

MR. WALDMAN: One of these documents, your Honor, just so our correlation between the pretrial order and the trial records shall remain clear was not specified in the order. It is a letter of April 14, 1970 -- perhaps two of those -- but we have seen them, I think they were presented on the motion for summary judgment and we make no objection to their authenticity.

THE COURT: All right, just on the grounds of relevancy. The objection is noted and will be ruled upon at the end of the case.

MR. HALL: I will offer Exhibit 5, a Xerox of the ballot that went to the members of the offshore or seagoing members of this union.

MR. WALDMAN: Yes, that is correct.

MR. HALL: This is a better copy.

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Sheldon - direct

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Mates and Pilots Journal of the union for March and May of 1970.

MR. WALDMAN: Yes, they were marked and we want them in.

[Plaintiff's Exhibits 11 and 12 received in evidence.]

Q Did you receive and answer to any of the letters that are now in evidence as Exhibits 6 through 10?

A No, sir.

O Did you receive any answer from Captain O'Callaghan or the International Union or any other officers of the union in response to any of the requests made by your?

A In respect to this right to demand to express our views on the consolidation? No.

Mr. Counsel, one moment. A letter was addressed to a Scave from O'Callaghan in respect to our request. I believe this letter indicated that those people who wished to make statements in the paper, the union paper, against the wisdom of this new constitution, provision will be made for them to do so on some kind of an equal basis with other locals of the union.

- Q Is this the letter you are referring to?
- A Yes, sir.

MR. HALL: It is unmarked. Can we stipulate that

	1	arus biletuoli darect
	2	this can be introduced?
	3	MR. WALDMAN: We will stipulate authenticity but,
	4	again, I object on the ground of relevancy and materiality.
	5	THE COURT: This letter is in the same catagory
	6	as the others?
	7	MR. WALDMAN: Yes, it deals with the same subject
	8	matter, an area in which we claim there is no duty having to
	9	do with publishing anything under the law.
XX	10	[Plaintiff's Exhibit 14 received in evidence.]
	11	MR. HALL: Could I have a minute, please?
	12	[Pause]
	13	Q During this time, February and March of 1970, did
	14	you go personally to see any officers of the union?
	15	A Yes, I made on personal visit up there with him,
	16	I believe, Victor Soto and somebody else. I don't recall who
	17	it was now.
	18	Q A member of the committee?
	19	A Soto was. I can't put my finger on the other part
	20	Q Who did you speak to?
	21	A A secretary in the office.
	22	Q What office was this now?
	23	A The International Organization, MMP, 39 Broadway,
	24	New York.
	25	The COURT: Where you used to be president?

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I believe she said he was unavailable. Did you say anything else? Or any others with you say anything? SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

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A I don't recall what the conversation was. We went there with the purpose of speaking to Captain O'Callaghan or Captain Sohnen and made that request and I believe that my companion on that visit also reiterated the request.

THE COURT: When you asked to speak to Captain O'Callaghan you didn't get to see him?

THE WITNESS: Yes, that would be stating it clearly your Honor.

Q Did you state what you wanted to see him about?

MR. WALDMAN: Objection to as totally irrelevant
and immaterial.

A Yes, I would say so. Speak to him in connection with the referendum going on, about the consolidation.

Q Did you make any further attempt to see him or see Sohnen or O'Callaghan?

A I didn't myself, but I think several other members of the committee did. It was our intention to pursue the question further and other people went at other times.

THE COURT: As I understand it, for whatever it is worth -- Mr. Waldman says it is irrelevant -- but as I understand they tried to get this cooperation from the International and didn't get it.

MR. HALL: That is right.

THE COURT: Why belabor the point? Suppose he went

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entitled to give it to them in response to those letters, and the fact that he pressed doesn't seem to be relevant and we will assume he did and having met him I would assume he did.

Captain Sheldon, you don't seem to impress me as a man who would take no for an answer.

THE WITNESS: I did have to take no a number of times but I do it with great reluctance.

Q Captain Sheldon, have you made an examination of the old constitution and the new constitution?

A Yes.

Q Have you made any notes of differences between the provisions of the old constitution and the new constitution?

A I made an examination to pick out those amendments of the old constitution by the new constitution which were really irrelevant to those necessary to consolidated locals and I, on several pieces of paper, I think I submitted one to you, I had noted these things down, which I felt properly should have been submitted as separate amendments, since the old constitution, under whose authority this whole job was done, provided that the constitution be amended by seriacim, no other way.

MR. WALDMAN: Excuse me, may I move to strike the last portion but will reserve argument until we get the

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of Local 88 that it was also mailed to other members who had shipped out of Local 88?

A I don't know that.

Q Do you know whether it was also mailed to all of the ships having Master, Mates and Pilots contracts?

A I don't recall. Possibly it was but I just don't happen to recall that.

- Q Do you know that the number of copies printed was many times that of the membership of Local 88?
 - A Many times?
 - Q Several times?
 - A I really don't know.

May I ask you, are you referring to the times when I was an official of Local 88 or later? I had no way of knowing what happened later.

Q At the time you were an official.

MR. MALL: I object to the relevance.

THE COURT: I can see the relevancy. The assumption is the information is the information wants to put in it and counsel is arguing that people got it.

MR. WALDMAN: Of course, your Honor.

Q At the time that you were an officer, the earlier years, do you know that several times the number of the member-ship of Local 88 were printed of each issue?

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- A I will say maybe twice as many as required for the membership of Local 88, but I don't have the precise figures and I don't want to give you a precise figure because I can't.
- Q I show you this document and ask you if you can identify it, sir?
 - A Yes.
 - Q What is that?
- A This was the January-February 1970 issue of the MMP Local 88 Bulletin.
 - Q Does that have a signed article by you?
 - A Yes it does, entitled "Convention Report".
- Q In that did you set forth your views as to the referendum about to take place?
- A The views I set forth here were my views but not necessarily my complete views. In a limited space I believe I was allowed a couple of hundred words. I attempted to say what I orally would say in a couple of thousand words.
- Q You spent about two hours yesterday giving us your views on that subject?
 - A Yes, I think so.
- Q It would be hard to compress that into any newspaper, Captain?
- A I think it would be possible if I took the time to compress it. I guess I could have gotten the same material

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- Q Did other members of the committee ask questions?
 - A Captain Sheldon acted as spokesman and Mr. Simon was appearing to cooperate. He was going to answer but the attorney interjected and said that he was advising his client not to answer and if they wanted any information we would have to get this from the ballot committee.
 - Q Did he say that the ballot committee had control of that?
 - A Yes, sir.
 - Q Any other time you spoke to Mr. Simon or Lybrand?
 - A No, I didn't.
 - Q Going back a couple of months, about the time of the beginning of this referendum or before, did you go to the International office on any occasion or speak to any of the International officers?
 - A Yes, sir.
 - Q Could you tell us about that?
 - A Relating to our remedy within the organization, we pursued the letter to the secretary-treasurer of Local 88, a chance to get our views in the -- more or less seeking machinery to get a method of getting our views in the publication opposing the constitution.
 - Mr. Scavo received our communication and said he turned it over to the attorney, Mr. John Harolds and we would have

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2 | to make an appointment with him.

We got an appointment with Mr. Harolds and went to see him and he proceeded to say that the authority of the committee was limited and he wrote us a letter which was taken back to the --

THE COURT: Our attorney, you mean the --

THE WITNESS: Our Local 88 had an attorney, local attorney.

A [continuing] We took this letter already sent, he gave us a copy sent to the local president, Mr. Joseph Gaier and the letter was consequently read at the next regular meeting. I took exception to the letter as the rest of the members of the committee.

THE COURT: What has this got to dowwith this?

0 My question was about going to see the International officers. Did you see them?

A Yes. We went to see the International officers as a body, a group, to speak to the International president and met there with Mrs. Vera Watson.

- Q That is the visit Captain Sheldon testified to?
- A Yes.
- Q That was a visit on your part?
- A I remember one other visit.
 - Q Could you describe that one?

1	ards	Soto - direct	209
2	A	The second, to gain an audience with Captain	
3	O'Callagh.		
4	Q	Who was with you?	
5	A	Mr. John Hayes.	
6	Q	What happened?	
7		THE COURT: Sheldon wasn't at that meeting?	
8		THE WITNESS: No. Captain O'Callaghan was not	
9	available.	We were told to come back later.	
10	Q	Did you come back later?	
11	A	No.	
12	Q	Did somebody	
13		MR. WALDMAN: I move to strike this as hearsay.	.
14		THE COURT: Yes.	
15	Q	Do you know what local Captain O'Callahgan is a	
16	member of?		
17	A	Local 14.	
18	Q	In Baltimore?	i
19	A	Yes.	
20	Q	Do you know if he ever held office in that loca	17
21	A	Yes, sir.	
22	Q	Do you know what office?	
23	A	Not exactly but I believe he was secretary-trea	surer
24		al I am sorry, president or secretary-treasu	
25		Immediately prior to his taking International o	

TRANSCRIPT OF PROCEEDINGS July 2, 1975 (EXCERPTS)

1	rdbr Gaier-direct 6
2	that period of time?
3	A I started as a representative. I went to second
4	vice president, to president, New York port agent, and
5	vice president, Atlantic Offshore Division of the Masters,
6	Mates & Pilots.
7	Q The vice president of Atlantic was your most
8	recent position?
9	A Yes.
10	Q For how long did you hold that job?
11	A From October 1, 1970 through January of '75.
12	Ω And immediately prior to October 1, 1970,
13	what was your elective position?
14	President of Local 88, Masters, Mates & Pilots.
15	Ω At that time what was Local 88?
16	A Local 88 was a local of the parent organization
17	of Masters, Mates & Pilots.
18	Q Located where?
19	A Port of New York.
20	Q And for how long a period of time did you hold
21	that title of president of Local 88?
22	A July 2, '65.
23	Q So from July 2nd of '65 through October 1, 1970,
24	you were president of the New York local?
25	A Yes.

1	rdbr Gaior-direct 8
2	issue was published?
3	A Yes.
4	THE COURT: Refresh my recollection.
5	Local 88 was the local that was against this?
6	MR. EPSTEIN: Yes, your Honor.
7	THE COURT: You were against it?
8	THE WITNESS: Yes.
9	Ω Were there a number of delegates from Local 88
10	who attended the convention which led to the promulgation
11	of the new constitution; that is, the one that was in ef-
12	fect on October 1, 1970, and the Offshore Division bylaws?
13	A Yes.
14	Q Could you tell me what the vote of the New York
15	delegates were with respect to that proposed new constitution
16	A Five delegates represent Local 88 and they all vot
17	unanimously to reject the constitution at the convention.
18	Q And do you know, Captain, whether some of these
19	deleates are part of that group which has brought this lawsu
20	to set aside the referendum election?
21	A Yes, sir. Mr. Lloyd Sheldon, a delegate,
22	I believe, is the plaintiff in this suit.
23	Q And was Mr. Soto Mr. Soto was not a delegate,
24	was he?
25	A No, he was not a delegate.

A I believe there was about 95, 9800 approximately.

THE COURT: How many did you say were printed

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of this?

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1	rdbr Gaier-direct 10
2	THE WITNESS: 14,000.
3	Q That number then being far in excess of the
4	membership of Local 88 and also in excess of the entire
5	membership of the union?
6	A Yes.
7	Q Do you know, Captain, what distribution was given
8	to this Local 88 newspaper?
9	A Yes.
10	Q Could you tell me what the distribution was?
11	A All Local 88 members were mailed a copy at
12	their home address. 5 copies were sent to all contract
13	vessels
14	THE COURT: Five copies each? Each contract
15	vessel got five copies?
16	THE WITNESS: Yes.
17	MR. HALL: I would like to know where he knows
18	this of his own knowledge.
19	THE COURT: How do you know this?
20	THE WITNESS: Because I gave instructions to
21	do it.
22	THE COURT: To whom?

would be laid up or a ship would be sold and it would be

returned to us and we would get the return. It would be

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THE WITNESS: The printer. Occasionally a ship

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wrapped up in a bundle.

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THE COURT: In other words, you gave instructions to the printer and you deduce those instructions were followedbecause with respect to some ships which you ultimately discovered were laid up, the package sent to them came back to you?

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THE WITNESS: Right, your Honor.

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Captain, if I may just ask, what is the significant of sending five copies to each one of these ships?

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Well, very many people at the time of the printing would be at sea and we mail one at home and perhaps the wife would leave it until he returned and we wanted to

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disseminate information. We sent it to his ship.

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What I want is how many members of the Masters, 0 Mates & Pilots would be aboard each of these vessels?

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A Five.

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So there was sufficient --

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Passenger ships, of course there were more.

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7, 9. It all depends.

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THE COURT: They weren't all Local 88 people?

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THE WITNESS: No, sir, they were not.

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To what membership then were these Local 88 newspapers reaching when they were sent to the vessels themselves?

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Gaier-direct

- A Repeat that, please.
- Q To what group of union membership?
- A To the entire membership.

MR. HALL: Objection. He couldn't know who they were reaching.

THE COURT: That is his conclusion obviously.

His conclusion is based on his believe that there were -
did you send 8 to passenger ships?

THE WITNESS: Some 9, some 7 to passenger vessels. We have records of all ships entering New York, whether they were Local 88 or Local 14 men because they cleared or shipped through our hall.

WE would have records there to that effect. Not every ship that entered the Port of New York had 88 men.

Some of the ships coming from the WEst Coast would have Local 90 men. Some of the ships from New Orleans would have Local 20 men on it.

Q When these copies were sent to the ships for the ship's officers, these officers would be officers who were not only members of Local 88 but rather Offshore Division members coming from some other offshore locals; would that be correct?

- A Yes.
- Q Was there any other distribution made in addition

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this for years and years.

THE WITNESS: No, all of them. We have been doing

I don't know offhand if it is in Long Island City.

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THE COURT: This wasn't just a practice for this issue?

THE WITNESS: No. We have been doing that for years and years.

Now, you indicated that there were some sent to the members of the union in addition to the Local 88 members. Could you tell us how this list came about?

Whenever a man came into the Port of New York he would be required, before he was registered on the list, to fill out a personnel card. On that personnel card it required that he put his address on there. We would take the address and put it onto a complimentary list. That way he would get information pertaining to Local 88.

This list was given to the printer and the printer then under your instructions would have sent out a copy of this newspaper?

A Yes.

THE COURT: I can see the purpose of doing it in this particular case but what was the general purpose?

THE WITNESS: Your Honor, at that time we were soliciting for members. One local had a different dues structure and we felt that because a man utilized the Port of New York he should be a member of the Port of New York, although constitutionally he was entitled to the

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ments of the officials of Local 88 with respect to the proposed new constitution and Offshore Division bylaws?

MR. HALL: Objection.

THE COURT: Sustained.

Q Captain, do you know with respect to each of these officials whether they were for or against the constitution?

MR. HALL: Objection.

A No.

THE COURT: What relevance does that have?

MR. EPSTEIN: The point being, I think the testimony will be that all of them were against it; that consequently I have some further questions with going about ships as to what transpired there with regard to getting the views of those who were against the constitution distributed among the membership.

THE COURT: I will allow it.

A They were against it. The entire Local 88 administration was against the constitution, the proposed constitution.

Q Captain, could you tell me what the duty of patrolmen encompassed?

A Well, the duties consisted of boarding each vessel that entered the Port of New York, meet with the members,

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MR. EPSTEIN: Thank you, your Honor.

against this constitution.

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	1	rdbr Gaier-direct 26
	2	identification.)
	3	MR. EPSTEIN: Mark this also.
××	4	(Defendants' Exhibit I was marked for identifi-
	5	cation.)
	. 6	MR. EPSTEIN: Mark this also, please.
xx	7	(Defendants' Exhibit J was marked for
	8	identification.)
	9	MR. EPSTEIN: Also mark this for identification,
	10	please.
xx	11	(Defendants' Exhibit K was marked for
	12	identification.)
	13	Q Captain Gaier, I show you Defendants' Exhibits
	14	H, I, J and K
	15	THE COURT: This is all on the question of
	16	remedy.
	17	MR. EPSTEIN: Yes.
	18	Qwhich have been marked for identification and
	19	ask you if you can tell me what these are.
	20	A Exhibit H, I believe, is the official ballot
	21	on constitutional amendments.
	22	Q And for when were those amendments adopted?
-	23	Was it indicated on there?
	24	A The balloting ended on November 23, 1971. I assum
	25	it was implemented in the earlier part of '72. It was

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1	rdbr	Gaier-direct	27
2	a 3-month refer	endum. That is Exhibit H.	
3	Q These	amendments posed?	
4	A Yes,	all of them passed.	
5	Exhib	it I is a ballot on the bylaws,	which all
6	of them passed.	This is October '73, so I assu	ume it went
7	into effect in	'74. Meeting held October '73	. It went
8	into effect Jan	uary of '74.	
9	Exhib	it J	
10	Q This	was the constitution, I believe?	
11	A Yes,	I am sorry, this is the constitu	ition.
12	Q That	is Exhibit I.	
13	A Exhib	it K is the proposed Offshore Di	vision bylaws.
14	That went into	effect in January of '74.	
15	Exhibi	it J is the amendment to the con	stitution,
16	and that was imp	plemented in January of 75.	
17	MR. EI	PSTEIN: I will ask that these do	cuments be
18	admitted into ex	vidence.	
19	THE CO	OURT: This is on the question o	f remedy.
20	Any ob	ojection?	
21	MR. HA	ALL: I have no objection. I d	on't know what
22	they are but I a	assume they are the various amen	dments that
23	have been adopte	ed since 1970 to the new constitu	ution and
24	bylaws. Just t	the fact they were adopted.	
25	MR. EP	STEIN: Yes. And that certain	changes
AND DESCRIPTIONS OF THE PERSON			A STATE OF THE PARTY OF THE PAR

were made and that these were amendments which were adopted by referendum of the entire membership in the case of the constitutional amendments and by the entire membership of the Offshore Division in the case of the Offshore Division bylaws.

Specifically, if I may point out, that with respect to the Offshore Division bylaws, one of the amendments was an amendment increasing the dues structure by imposing an additional 6 per cent from the members vacation pay that would be earned.

- Q Is that correct? Captain Gaier?
- A That is correct.
- Q And specifically with respect to one of the amendments to the constitutional itself --

MR.HALL: I would suggest that the documents speak for themselves. Is this argument by counsel?

MR. EPSTEIN: It will but I think for clarification of the record, just to point up the highlights, one of them, the most recently amended constitutional provision effective in 1975, which is Exhibit J, provides that "Each member of the General Executive Board shall have one vote and a majority of the votes cast at any meeting of the General Executive Board shall be necessary to adopt any resolution."

It goes on.

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"A majority of the General Executive Board members shall" --

THE COURT: If we come to a remedy, both sides can believe the effects of this.

MR. EPSTEIN: Yes, your Honor.

MR. HALL: I have no objection. I dispute the argument he is presenting.

(Defendants' Exhibits H, I, J and K were received in evidence.)

- Q Captain Gaier, aside from these referenda which passed these three amendments to the constitution and the one amendment to the Offshore Division bylaws, have there been any other referenda that have been sent out and voted upon by various parts of the membership of the International since October 1st of 1970?
 - A The two inland divisions had a couple.
 - Q Could you tell me what the inland referenda were?
- A The inland division was comprised of a local similar to the offshore. They put out a referendum whether or not to form two divisions, which they did, which was voted in the affirmative on.
- Q Am I correct they were two separate referenda, one for the West Coast inland locals forming a West Coast region,

1	rdbr Gaier-direct 30
2	and one from the East Coast inland locals forming an East
3	Coast region?
4	A That is correct.
5	Q Were there any other referenda?
6	THE COURT: What happened to those referenda?
7	THE WITNESS: They passed. We have two divisio
8	now rather than numerous locals.
9	Q They have not as yet, though, combined into one
10	division; is that correct?
11	A Right. They are two divisions.
12	Ω Two regions of the division?
13	A Two regions of the division, yes.
14	Q Have the pilots conducted any referenda?
15	A Yes, they do on their locals. Also on
16	structuring of the welfare plan.
17	Q Have the pilots themselves actually formed a
18	division, as did the Offshore Division?
19	A Yes.
20	Q They voted on a set of bylaws forming a division?
21	A Yes. However, I believe there was one pilot local
. 22	remaining out.
23	Q Would that be the Panama Canal?
24	A Local 27 and 30 of the Panama Canal, I believe,
25	are out. All the rest of the pilot locals have consolidated

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on the amendment of the Offshore Division bylaws conducted by the Offshore Division itself? Any other referendum?

Into the Pilots Division.

Q Into the Pilots Division?

Just the one in the latter part of '73. On the bylaws?

I am talking about the contractual referendum. Q

Were there any referenda other than the referendum

Yes, the collective bargaining agreeme t went out on referendum.

That was a collective bargaining agreement covering Q what group of people and what period of time?

Offshore Division, for a three-year period from June to '75.

Was that voted affirmatively?

A Yes.

Captain, with your knowledge as an official of the union were there any other steps taken in this interim period of time between 1970 and the present time with respect to the structure of the Offshore Division; that is, with respect to various ports and the structure within the ports?

A Yes.

Could you tell us some of that, please.

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In Philadelphia we eliminated the port agent and substituted an assistant port agent. In Baltimore we eliminated the executive assistant port agent and added an assistant port agent. The same for New Orlean's.

MR. HALL: I am going to object as to relevancy.

THE COURT: Well, I suppose the purpose is to show there is so much water over the dam that relief should be very sparse.

MR. HALL: I don't see that it leads to that. Perhaps what the defendant wants to show is the present status. I think we can stipulate on what amendments have occurred.

MR. EPSTEIN: I won't pursue this any further.

Q Captain, can you tell me structurally what has happened to the former Offshore Division local membership and locals with regard to their assets, with regard to individual membership within the local during this period of time?

A Well, the membership has dwindled considerably from 1970. The Offshore Division had approximately, I believe, about 8300 members in 173 and it is down to about 5700 as of the first of the year.

THE COURT: That is due to what?

the ships are getting larger. Where you would have a 10,000 ton ship with a master and four mates, you have 50,000 ton ship or a 33,000 ton ship with one master and four mates. The container vessels are faster and larger. 10 knots or more knots.

THE COURT: Less shipping and more efficient shipping as far as labor is concerned?

port they do it now in five or seven or ten hours.

Q In addition is it not true also there no longer are recognizable locals in which members belong to the local; they now offshore all belong to this one long Offshore Division?

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- 2 A Offshore Division, yes.
 - Similarly, with the pilots they no longer belong to the pilot locals but they have disappared and it is now Pilot Division?
 - A Yes. Same with the inland also
 - Q Captain, do you know what ahppened to the assets of the various locals since the consolidation?
 - A Each local --

MR.HALL: I object. I don't think it is relevant at all now.

MR. EPSTEIN: Again, your Honor, I think this is part of seeing exactly what has occurred during this period of time. It is a question of --

THE COURT: It is relative to what relief I should give. If a merger has taken place, maybe she should not have merged in the first place but it may be impossible to unscramble them.

MR. HALL: Because of finances?

MR. EPSTEIN: That is one of them.

MR. HALL: I didn't know the argument was going to be made as to that.

MR. EPSTEIN: What I am trying to do is to have on the record the various changes that in this five-year period have actually been brought within the structure

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of the union from the time it was under the local structure to its present time today.

THE WITNESS: Shall I continue?

Could you, please.

An example would be Local 90. Local 90 members voted to liquidate their assets. They had one and a half million dollars in cah assets and they refuned that money to the membership. As of three or four weeks ago \$62,000 of a million and a half dollars has not been claimed. The buildings in Local 90 are now in trust and they are to remain in trust for the next 40 years.

Local 20, as an example, in Galveston and Houston, Texas, their membership voted to turn over the assets to the International.

Local 15 in New Orleans also voted to turn the assets over to the International.

Local 5, I believe, still have -- not Local 5, I am sorry, the Boston local.

A 11. We in New York, we have our building in a membership corporation and our assets, cash assets are only \$55,000. That is still in the bank.

Q Captain, are you aware of any scheduled convention that the International organization -- has the International scheduled a convention for this year, do you know?

2 | wasn't he?

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A Yes. He was on the opposition slate.

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Q I apologize. Aside from him and Mr. Nereaux every incumbent official was on your slate; is that correct

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A Yes, except for the two.

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Q Mr. Nereaux had been elected at a special election the year before to an assistant port agent position; is the correct, in New York?

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A Yes.

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Q Just to wind it up, in the election of 1974, which was counted in January 1975; correct?

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A Yes.

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Q In that election not only you but a great many other knowmbent officials including International President O'Callaghan and International Vice President Cauldwell were defeated; is that correct?

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A Yes.

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Q You testified that every issue of the Local 88 bulletin, during the years '65 to '70 roughly, were sent out to this large mailing list; is that correct?

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A Yes.

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Q To the various vessels, to the different ports, and so on?

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A Right.

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THE COURT: Let him finish.

A When a paper wasn't delivered to a home address, I don't know the form number but the mailman would fill out a form and tha would come back to us in a bundle maybe three or four weeks after the mailing and we would change the address.

- Q Did you yourself speak to the printer?
- A Well, actually it was routine. I didn't speak to the printer advising him of each mailing.
 - Q Did you at any time --
- A When the editor would set the print up and the run would be prepared of the 14,000 issues, the printer would take it upon himself to mail it out.
- Q You don't know of your own knowledge that he did, do you?
- A Well, he billed us and we paid him for it.

 I must assume he did it, unless --
- Q Did you yourself speak to the printer about these matters?
 - A I would go and put the paper to bed --
 - Q When you say to bed you mean in the printing shop?
- A Yes, I would go out to Long Island City. When the man was down here on the East Side I would go down. Actually the editorial board would go down, three or four of us

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FOLEY SQUARE, NEW YORK, NY

Gaier-cross

would go down with the editor and look the paper over before

Q Can you tell us on which of these occasions you

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it went on the run.

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2 to all these people?

A No.

And did you specifically say to the printer at any time during your five years as president that I want it sent to these people or these people and these people?

A I can't hear you.

Q You didn't specifically say to the printer in any conversation held during your five years as president in which you specifically told him who you wanted it sent to?

A Yes. I just said every week our girl would send the printer the addresses of people that requested the paper and change of addresses, and also the government form that would come back due to an incorrect address or the man moving.

Q That isn't exactly what I asked you, Mr. Gaier.

I am asking you did you specifically, yourself, at any
time during your five years as president say to the printer
that you wanted it sent to all of the vessels and to all
of the people whose names you had, even though they are
non-members of Local 88; did you actually tell him that
personally yourself?

- A No, I did not tell him that.
- Q So you don't know --
- A All done by mail.

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You weren't president until 1965?

That's right.

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You don't know of your own knowledge that he was

actually so instructed, do you?

What?

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1	rdbr Gaier-cross 48
2	actually so instructed; is that correct?
3	A Well, I don't understand the question to be
4	perfectly honest. He must have been instructed because
5	they went out.
6	Q I am asking you whether you know of your own per-
7	sonal knowledge?
8	A Yes, I would say yes.
9	Q How do you know it of your own personal knowledge
10	A Because I would go aboard the vessel and see the
11	copies.
12	Q Well, that doesn't tell us whether there were
13	instructions to the printer, does it?
14	THE COURT: The stork might have brought it.
15	(Laughter.)
16	MR. EPSTEIN: I think he is arguing with the
17	witness at this point.
18	THE COURT: You are arguing with him.
19	Q Mr. Gaier, in the spring of 1970 you yourself
20	took an active role in your own name in regard to the new
21	constitution, didn't you?
22	A Yes.
23	Q Specifically, in your name and in the name of Fran

Scavo, who was then your secretary-treasurer, you sent

out an open letter to the membership, didn't you?

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Tuttle-direct

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THE COURT

THE COURT: Both things are voluntary?

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THE WITNESS: Yes.

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THE COURT: But it is the custom?

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THE WITNESS: It is my choice.

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THE COURT: But it is the general custom of people

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in your position, I take it?

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THE WITHESS: I would say yes.

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Q For how long did you say you had been a member of the union?

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A Joint Local 90, June 26, 1940.

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Q And Local 90 was which local of the

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union?

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A It represented the entire Pacific Coast from Canada to Mexico.

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Ω And did it have offices in several of the ports

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on the West Coast?

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A Headquarters was San Francisco with branch offices in shipping halls in Seattle, Washington, Portland, Oregon

20

and Wilmington, California.

21 22

Q Now, Captain, during the time that you were an active member of the International organization of Masters,

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A Yes, I did.

Mates & Pilots, did you go to sea?

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Q And what ratings did you have and what type of

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and try to tear him to shreds, you will know what his back-

THE COURT: Background so when you cross examine

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ground is.

Q And for how long did you stay in the first vice president's post?

A With relections I was first vice president until October 1, 1970 when my title was changed to assistant port agent, Port of San Francisco.

Q Now, could you describe the position of first vice president for Local 90; that is, what it full-time, part-time, was it paid, et cetera?

A It was not a paid position. The bylaws of former Local 90 provided that upon the absence of either the president or executive vice president or both or at either of their direction. I could be brought ashore and placed in a paid position.

Q And starting, let's say, from the year 1969 down for what period during this year you actually assumed the shoreside paid duties of first vice president?

A I came ashore in August of 1969 and remained until approximately the 16th of December that year as assisting or doing the duties of both president and /or executive vice president.

Q And what about the period in 1970?

A In 1970 under the new bylaws I came ashore on the 12th of March and every 30 days by coastwise letter, and

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publication of the International Organization of Masters,
Mates & Pilots, AFL-CIO, Local 90, for the month of
December 1969.

Q Did you have any involvement in the preparation of this issue?

A Under the bylaws of Local 90 we were required to emission an editor belonging to the Newspaper Guild who put the paper, as they say, to bed. I was instrumental in sending the articles, telling him what page they should be on, as well as the letters to the membership.

MR. EPSTEIN: May I ask this document be introduced in evidence, please.

THE COURT: What is the relevance? What are you offering to prove?

MR. EPSTEIN: Again, your Honor, this and a series of other newspapers published by Local 90, I am going to try to introduce and I am going to ask the captain what distribution this newspaper had and in various portions of the various newspapers there will be letters to the editor, again strongly in disfavor of the new constitution and the Offshore Division bylaws, paralleling, and in one case exactly duplicating, one of the documents that Captain Sheldon wished to have published.

THE COURT: Any objection for that purpose?

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MR. HALL: No objection. I don't think the relevancy of this issue is shown.

MR. EPSTEIN: This issue is in September of '69 and there is very little in this other than one letter, more or less at the starting gate, before things really started, where they started against the proposed new --THE COURT: Received for the purpose indicating.

(Defendants' Exhibit M is received in evidence.)

Captain, could you tell me what the distribution of this paper in particular of the Sextant was?

It was mailed to all active members of Local 90 for which we had current addresses as provided for under our bylaws. It was mailed to sister locals that shipped offshore. It was mailed to the pilot locals and the inland locals. It was mailed to management, steamship companies that are interested, other maritime units, Library of Congress, various libraries, et cetera.

> THE COURT: What was the run? THE WITNESS: 9,000.

In addition to this distribution by mail was there any other distribution made of these newspapers?

Besides mailing it to the members at their addresses, for each ship under contract in the

Tuttle-direct

Pacific Maritime Association and then Local 90, five were addressed to the master, the chief mate, second mate, third mates and sent to the steamship company to be put aboard their ships.

We put out copies on the tables in various
union halls on the West Coast. Our girls -- I am speaking of our staff, secretarial, would bundle copies and they
were sent by passenger ship for distribution to the
United Seaman Service Clubs, which I actually know, Yokohoma,
Okinawa.

Q Captain, id the Local 90 structure have indivuals called patrolmen or branch representatives?

A Yes. The patrolmen met the vessels at payoff and contacted all the officers present. Each was given a copy of the paper --

MR. HALL: I object tothis. Perhaps I should have objected earlier because he is testifying as the things of which apparently he would have no knowledge.

THE COURT: How do you know all this that you are telling us?

THE WITNESS: I was in the position to give the orders that this would be done as their routine duties.

I have no reason to believe they didn't do that.

THE COURT I gave orders.

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Q Could you tell us what these orders were?

A To contact each officer aboard ship, make certain he got a copy of the papers, listened to his views, complaints, anything to do with the contract. If he wasn't aboard, to slip it under his door.

Q You indicated you have no reason to believe that these instructions were not carried out?

A Nome at all.

Q Now, what vessles would be visited by the patrolmen of Local 90?

A Would you give me the years you are speaking of?

Q Let us talk about 1969 and 1970.

A This was at the height of the union providing logistical support to hostilities in Indochina. We not only visited the berth line vessels which were based on the West Coast but also the many vessels operated by the Military Sea Lift command which our members were aboard carry ammunition, et cetera, so the Far East. A great number of ships.

Q And would some of these ships that you described under contract to what is known as the Atlantic and Gulf Coast locals?

A Since there were more Atlantic and Gulf Steamship companies, they had the predominance of vessles under

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for this as previously described?

That is correct.

	2	and ask you if you can identify that.
	3	A This is Volume 20, April-May 1970, No. 3, The
	4	Sextant.
	5	MP. EPSTEIN: I offer Exhibit P into evidence.
	6	MR. HALL: No objection.
xx	7	(Defendants' Exhibit P was received in
	8	evidence.)
	9	Ω Finally, Captain, I will show the May 1970
	10	issue, which I would like to have marked for identification.
xx	11	(Defendants' Exhibit Q was marked for identifi-
	12	cation.)
	13	Ω I show you Exhibit Q for identification and ask
	14	you if you can tell me what that is, Captain?
	15	A This is Volume 20, May 1970, No. 4, of The
	16	Sextant.
	17	MR. EPSTEIN: I offer Exhibit Ω into evidence.
	18	THE COURT: Received.
xx	19	(Defendants' Exhibit Q was received in
	20	evidence.)
	21	Q Captain, with respect to the distribution
	22	of Exhibit Q is it the same as you previously described
	23	with respect to the earlier exhibits?
	24	A Exhibits P and Q more were mailed out as
	25	people's dues status became more stable.

Tuttle-direct

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- Q Thank you. I don't recall but I believe
 I similarly asked you about the distribution of P and O and
 N, were they all the same distribution as you have described?
 - A Yes, they were.
- Q During the period of time in December of 1969 and through 1970 to to at least October 1, 1970, did Local 90 have any bylaw requirements with respect to membership meetings?
- A In order to remain in good standing on the shipping list, a member must attend one of either two meetings a month. They were held on the second and fourth Wednesdays of the month.
- Q When you say in order to stay on the shipping list, this implies these are members who are not at sea but who are in port; is that correct?
 - A That is correct.
- Q Captain, during the period that you were in your first vice president position, actually shore side, which you said was March 12, 1970, throughout that year did you attend the meetings of the membership in the San Francisco port?
- A I attended the meeting as an official, and depending upon the presence of the president or executive vice

1	rdbr Tuttle-direct 70
2	president I was either the chairman, the reading clerk or
3	sat with the members in assembly.
4	Q Do you have any recollection as to whether or not
5	at those membership meetings the question of the
6	new constitution and the new Offshore Division bylaws was the
7	subject of conversation or discussion?
8	A Headquarters of former Local 90 had a rank and fil
9	constitutional or consolidation exhibit who reported out
10	at each meeting. Our office staff did whatever paper work
11	was required, duplication, and they reported out at each
12	meeting.
13	Q And could you tell me what the views of this
14	committee of Local 90 were with respect to the adoption of
15	the new constitution and bylaws?
16	MRL HALL: This is awfully vague. It is
17	interpreting other people's views.
18	THE COURT: Did they express themselves as for or
19	against the constitution, the new one?
20	THE WITNESS: The committee was a hundred per cen
21	against.
22	MR. HALL: This, of course, is an interpretation
23	of other people's views.
24	THE COURT What?
25	MR. HALL: This, of course, is an interpretation of

Tuttle-direct

other people's views as expressed.

THE COURT: The proposition was to vote for or against. I guess he didn't remember what he said on that.

Q Can you tell us who the individuals were who were on this Local 90 committee?

A The chairman at all times was Harold Sahlin.

There was a Peter Spencer at times, a Harold Mannering and other members as they would ship out and come in. But Mr. Sahlin was always the chairman.

MR. EPSTEIN: I don't know if it is important at this time or how you would like to proceed, but in these newspapers, if you will examine them or if you wish me to point them out, there are letters to the editors, membership's views --

THE COURT: Why don't you point them out so counsell and I can know what you are talking about. Starting with Volume 19.

MR. EPSTEIN: Again, this is in December, which was prior to the time that the actual constitution was being drafted by the Constitutional Committee. The membership comments appear on page 4 of this document. There are two letters there or two comments, both of which bear, among other names, those of Mr. Sahlin, who was the chairman of the Constitutional Committee of Local 90. Among other

MR. EPSTEIN: Yes. Sometimes they are carried over on a number of pages.

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THE COURT: Each time that is what you are callin attention to.

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2	Q In other words, no longer were there elections
3	by what formerly had been the electoral body of a local
4	voting for its officers; is that right?
5	MR. HALL: Objection, irrelevant.
6	MR. EPSTEIN: This is again part of the unscramb-
7	oing.
8	THE COURT: It has to do with the remedy.
9	MR. WALDMAN: The unscrambling of the eggs.
.0	MR. HALL: The Offshore Division bylaws are already
1	in evidence.
2	THE COURT: He maybe figured I couldn't read.
3	MR. HALL: I have more respect for the Courts.
4	MR. EPSTEIN: I have no such thoughts at all.
5	I want to bring out the fact there has been an election,
6	that the officers took office in January, the Offshore
7	Division officers.
8	Q Is that correct?
9	A Those that were not in dispute.
0	Q The only ones in dispute were
1	A The International officers, which was a runoff.
2	I shouldn't use the word dispute, there was a runoff.
3	Q Do you know for what period of time those

Offshore Division officers are to serve?

A Three-year period commencing 1-1-74.

1	rdbr	Tuttle-direct-cross	81
2	Ω	1-1-75?	
3	A	'75, correct.	
4		MR. EPSTEIN: I have nothing further.	
5		THE COURT: All right, Mr. Hall.	
6	CROSS EX	AMINATION	
7	BY MR. H	ALL:	
8	Q	Do you know what the press run of The Sextan	t was
9	during th	ne spring of 1970?	
10	Δ	Yes, 3,000 copies.	
11	Q	3,000 copies?	
12	A	Each month.	
13	Q	Each month now, you testified that the members	ship
14	in good s	tanding fell off in January and March of that	year
15	Α	Fell off in January of that year.	
16	Q	And then was finally restored.	
17	A	It came back to the final count upon people	that
18	are gone	overseas and come home and pay their dues,	
19	et cetera	, yes. It would build back up. Plus the fact	t we
20	took in n	ew members during that time.	
1	Q	then was the time it was built back, about Ap	oril
2	or May?		
3	A	I would say by March the new number would be	
4	known.		
5	Q	And the press run was never more than 3,000?	

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1	rdbr	Tuttle-cross	82
2	A	Never.	
3	Q	The membership of the local itself was	about 2.000
4	correct?		
5	A	That is correct.	
6	Q	And the newspaper was not sent to those	who had
7	fallen in	bad standing?	
8	A	No.	
9	Ó	And do youhave to stay in good standing	and you
10		tend one meeting each month to stay in g	
11	ing?		
12	A	Only to remain on the shipping list, no	t to be in
13		ding. You are in good standing until y	
14		ended from dues, which would be six mont	
15		MR. HALL: That is all.	
16		MR. EPSTEIN: I have nothing further.	
17		THE COURT: Thank you.	
18		(Witness excused.)	
9		MR. HALL: Excuse me, your Honor. Do the	e defend-
o	ants rest		
1.		MR. EPSTEIN: We have nothing further,	your Honor
2		MR. HALL: I would like an opportunity to	
3		vitness. I have one here. I have not be	
4		name of the printer and I guess I will	

calling him for rebuttal, but I do have Mr. Soto.

This is another one. You are speaking of the one about the 88 delegates voting no.

Ω The January-February issue.

THE COURT: Here it is (handing)

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MR. EPSTEIN: I have nothing further.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. HALL:

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O Mr. Soto, you testified that the January-February

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text of the proposed constitution? A Yes.

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And also the full text of the proposed Offshore Division bylaws?

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A Yes.

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1	rdbr	Nereaux-direct	147
2	to your	present office?	
3	A	Right.	
4	Ω	By the way, is your present office the ed	quivalent
5	of the	former office of Secretary of Local 88?	
6	A	Yes.	
7	Ω	Prior to your election to office your occ	cupation
8	was a se		
9	A	Seaman.	
10	Q	Did you ship on MMP contract vessels?	
11	A	Yes.	
12	Q	What capacity did you ship?	
13	A	Second mate, third mate.	
14	Ú	Did you ever serve as a port relief office	er?
15	A	Yes, numerous times.	
16	Q	I direct your attention to the spring of	1970,
17	first of	all you recall that period?	
18	A	That's right.	
19	Ö	Is that the period that the referendum wa	s being
20	-onducted		
21	A	Yes, spring of '70.	
22	Q	Did you visit ships during that period of	time?
23	A	Yes.	
24	Q	Were you shipping out during that period of	of time?
25	A	Yes.	

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1	rdbr	Nereaux-direct 148
2	Q	For long trips or short trips?
3	Λ	Primarily on passenger trips, 14-day trips, 16-day
4	trips.	
5	. Q	When you speak of 14 and 16-day trips, were those
6	Europe	and back?
7	A	No, Caribbean.
8	Ω	Grace Line cruises?
9	Λ	Yes.
10	Ů,	And in between those trips did you serve as port
11	relief	officer?
12	A	Right.
13	Ω	Do you recall the newspaper which is Defendants'
14	Exhibi	t E in evidence?
15	A	Yes.
16	Ω	You recall that issue of the Local 88 newspaper?
17	A	Yes.
18	Ω.	Now, going back before or to the beginning of
19	1970 an	nd back into 1969, you were visiting ships during that
20	period	
21	Λ	Yes.
22	Ω	Was it customary
23		MR. EPSTEIN: Excuse me, your Honor, I don't know
24	if I un	derstood in what capacity he was visiting ships.
25	9	Extending us back to the line hate we tany,

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1	rdbr Nereaux-direct 149
2	were you shipping out during that period?
3	A Yes.
4	Q For long trips, short trips?
5	A I have always said short trips.
6	Q And you also served as port relief officer fre-
7	quently?
8	A Yes. To add further, I was also a potential
9	candidate in the forthcoming election and I did a lot of
10	electioneering on the ships, visited a lot of ships.
11	Q Directing ourselves to the period, say, from the
12	middle of 1969 to January of maybe February 1970, did you
13	have occasion when you went on ships
14	A I didn't hear that.
15	O Did you have occasion to see on the ships copies
16	of the various issues of the Local 88 Bulletin?
17	A Very scarce.
18	Q Did you see them at all?
19	A Periodically I would see one.
20	Ω Where would you see one?
21	A Mostly in the recreation room.
22	Ω How about the wheelhouse?
22	A Not to my knowledge I don't recall seeing them
24	there.

Q How about on the places where mates work?

1	rdbr Nereaux-direct 150
2	A Usually in the recreation room. It was practically
3	confined to that.
4	Ω Did you usually see one or two?
5	A No.
6	Q But it was common to see them?
7	A What?
8	MR. EPSTEIN: Your Honor, he has testified, perhap
9	not to Mr. Hall's liking, but he has testified.
10	O Do you recall the period do you recall when
11	that issue, Exhibit E, came out?
12	Λ Yes.
13	Ω When did it come out?
14	A It come out roughly in the June-July area of 1970.
15	Q Would it refresh your recollection to look at that
16	issue? Do you recall when it came out?
17	A The exact month I would say I couldn't; but I reca
18	the paper. I have read it over several times and didn't
19	take particular notice to the month.
20	Q Was there ever a time when you came across that
21	issue in visiting a vessel?
22	A No.
23	Ω You didn't at all?
24	A I don't recall coming across the issue.
25	O Do you recall any trips you took about that time?

In meeting these other LDO's in the other ports

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did you come across copies of the Local 88 Bulletin?

MR. EPSTEIN: Your Honor, he can't testify he can't recall if he hit these other ports during this period of time.

THE COURT: Your memory isn't very good, I must say.

THE WITNESS: I can't pin it down to the exact month that I was there. I was on and off ships periodically I didn't mark down what month I was on, what month I was off. I sailed very steadily, as my record will verify. I went coastwise frequently because the more ships you got on the more people you got to know.

- Q Did you generally make at least one trip a month?
- A Roughly.
- Ω In any of these trips did you see anybody with a copy of the Local 88 Bulletin, of this issue of the Local 88 Bulletin?

A I don't know. I can't say if he particularly had an issue. As I say, it was very rarely yousaw papers on the ships of Local 83 Bulletins. The only way they got on thip if the patrolmen brought them. Sometimes they ran out of them or it didn't come into the office for several weeks and they were out of newspapers. May whips you saw no newspapers. They were not mailed to the vessels.

which as I read it, directs a determination of whether the

newspaper published by plaintiffs' local union was widely

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I take it from the posturing of that sentence in the Court's amended order, the Court intended me to understand that if I found that fact to be established the plaintiff would have gotten all they were entitled to under the Court's opinion.

distributed among the union membership and that plaintiffs'

views were in fact veing disseminated.

Does anybody quarrel with that interpretation?

MR. HALL: As I interpret it, the wrongdoing would continue no matter what views were disseminated. In fact, everything that the plaintiffs had wanted to say was communicated, and communicated effectively to the membership of the entire membership, then possibly it might not be the duty of a court of equity to change the structure of the organication. I think in order to do that, in order for the views to have been disseminated enough to change the posture there, first they would have to be the plaintiffs' views, the views the plaintiffs sought to disseminate.

Secondly, they would have to be genuinely disseminated, not to members of the Local 88 but to the overwhelming majority of the voting members of the organization.

THE COURT: Assuming I accept Captain Galer's testimony in its entirety, would you contend that that didn't meet the mandate of the Court?

MR. HALL: Well, first of all I don't believe that the Local 88 bulletin -- I assume we are talking about this one issue.

THE COURT: Yes.

MR. HALL: Although it expresses some objections to the proposed --

THE COURT: I am reading between the lines.

MR. HALL: It doesn't contain those very objections or arguments that the petitioning plaintiffs had sought to have known. It named some of them but not all.

Captain Gaier, although it is his opinion --

THE COURT: Just confine yourself.

MR. HALL: Yes. Although it is his opinion that a large number of these actually got out he has no actual knowledge of the fact that they were sent out.

president of an organization testifies that he has been paying for this process for a number of years and it has always been going on and he is in chargeof the shop and it is his responsibility to see that things happen, that that testimony is corroborated by your witness who comes in and says it his happened except in this case, and you have known about this issue since June of '74 and you have the printer's number here lince June of '74. If it

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wasn't true, you knew what your own client told you, namely, that it is customary for this newspaper to be --

MR. HALL: To be taken to the ships by patrolmen.

I think Soto wasn't sure it was mailed to the ships or not.

THE COURT: He wasn't sure but it is there.

It is the practice for it to be there.

MR. HALL: To suggest that this would get to members in Mobile, Galveston and Houston and Port Arthur and Wilmington, California, and Seattle --

THE COURT: That is what he testified he did, that he sent it to all the SHIPS.

MR. EPSTEIN: And the locals.

MR. HALL: He said that is the standing order or the standing practice of the local to have them sent out but he didn't know that this particular issue was sent out.

THE COURT: He didn't know this particulr issue, but what reason is there to believe that this particular issue didn't?

MR. HALL: Nor that he ever gave instructions personally.

THE COURT: I know. He personally hadn't given instructions but he knew they had been given, it was the ractice of the union for years.

MR. HALL: He thought that was the practice.

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THE COURT: But it is his business to know.

MR. HALL: If he cares to know. He may not have cared to know and I don't think he diln't.

THE COURT: It is his business to know and according to your own witness it apparently happened every time except this time.

MR. HALL: My witness Soto, I don't believe he testified that he knows that he actually received the Local 88 Bulletin on board a vessel by mail.

THE COURT: No, he didn't. But he observed facts which would tend to indicate that the captain's testimony is true.

MR. HALL: Mr. Soto was here while Captain

Gaier was testifying and I assume since he didn't know he

took that to be the fact. He didn't say it was a fact. He

just assumed it was.

THE COURT: He observed facts which would tend
to corroborate Captain Gaier's testimony. As I said on
your cross examination the stork might have brought them and
other people may have brought them. But the captain
testified they were mailed. Your witness observed facts which
seem to me to corroborate them.

MR. HALL: He observed them on the vessels and they could have been brought by the patrolmen.

We have heard testimony, for instance, that in fact, although it may have been a tradition of the local to mail these out to the ships, the local's practice had been to save money by not doing it.

THE COURT: We haven't heard that testimony.

We heard testimony of a very voluble witness and he deduced,

that that probably would have been so from the fact they

were out of money.

MR. HALL: I didn't hear him as well as your Honor did, but I understood he was saying that there were discussions among the membership about cutting down the mailings.

THE COURT: He said discussion among the members about saving money of the union, and to him it would seem, as I gather his testimony, to him it would seem a waste of money to mail and therefore he presumed it had been mailed.

MR. HALL: As I say, it is my understanding that the newspaper -- it is quite unlikely the newspaper got to vessels that docked at Mobile and other ports other than New York.

THE COURT: Well, Captain Gaier categorically testified that it did. It was the known practice of the union and had been for many years going back to 1960. Your witness gave testimony which to my way of thinking

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corroborated that. He raised an issue as to whether this particular copy did get there. And this particular copy, the reason he thought it didn't was he saw piles of it in the locker room and he didn't see it on the ships that he happened to visit.

Now, I must say that I am constrained to reject the inferences. I am not saying I reject what he says.

MR. HALL: I would suggest that we have not heard from any witness, as far as I am aware, who actually received a copy of the Bulletin. If it in fact was mailed there must be a lot of people who did and they are certainly available to the International union.

THE COURT: I am not altogether sure about that.

I am quite confident I must have gotten the New York Times
in January 1970 but I am not confident I could come in here at testify to that.

MR. HALL: There are people who hold the permunent post of captain aboard a vessel and it is inevitable that such a person would receive, if they were in fact mailed to the captain --

THE COURT: I am sure that it is true but I am sure they would be able to remember and get in court and testify to it. I can remember where I was in January and February of 1970 and that I received and read this document.

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MR. HALL: Getting back to the New ark Times, you would be able to testify if in fact you received the New York Times during that period, that you got it fairly regularly in whatever way it was received by you. It would seem to me the captain of a vessel who was receiving bundle copies of the Local 88 Bulletin would know that as a fact.

able and so could you produce all the captains and say they didn't.

MR. HALL: I don't have the powers the International has. I only represent some members, one of whom is an officer now.

the veracity of the captain. He seemed to me to be an honest witness. His testimony seemed to me to be straightforward. It seems to me to have been corroborated by your own witness, and the issue of whether this particular issue — the question of whether this particular issue of the paper was withheld, I must say the testimony doesn't really seem to me adequate to suggest that it was.

In the first place, this at the time was certainly a hot issue and I can't believe that if all of a sudden this particular issue with headlines was not sent where

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MR. HALL: We hard that bundle copies of The Sextant were mailed to all of the vessels. Then we heard that the membership of Local 90 is more than 2,000 but the run never went beyond 3,000.

it was supposed to be sent, somebody ald have heard about

Therewould have been a beef in the union hall.

THE COURT: The mere fact that you produced -- what does that have to do with this?

MR. HALL: Out of that remaining thousand The Sexgant wa- supposed to be sent to all employers, local, shipping companies, and so forth

Bulletin was distributed as widely as it was intended to it to be the main vehicle for that distribution was the sending to the local halls and the distribution by union officers.

We had testimony from Captain Gaier that all the officers of all of the locals around the country, at least in 1971 -
I am characterizing it -- with political allies of each other and the incumbent International officials. It would appear that when this Local 83 Bulletin got to the presidents of the other locals it did not get distributed by them certainly to their members or to the men aboard the ships that came into their areas. That can be reasonably inferred from the sympathies and the political

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alliances that these officers and these other boards had.

We are hinging our discussion primarily on the unusual political attitude of Local 88 and the assumption that the officers of Local 88 share that unusual act. Certainly in the other ports it does not appear to be case. The evidence that was already in the evidence in the record before, the it contained statements not only from the International officers but officers from all of the other locals urging people to vote for the constitution.

In other words, the political machine was in very good repair at that time. If there was an exception in low York, that exception was a problem of membership sentiment more than anything else. But certainly if this issue of large bundles of this Local 88 Bulletin got to these other union halls in the other ports around the country, Savannah, Galveston, Houston, Baltimore, Philadelphia, Morfolk, Boston, Portland, Seattle, San Francisco, and so on there is very little reason to think and very strong reason to think otherwise that the officers of that union would energetically seek to distribute the newspaper.

So I would say that the main avenue of distribution of this paper to persons not members of Local 88 were severely curtailed for that issue. It is certainly a reasonable surmise. We have no reason to thinkk other-

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wise.

The only exception would be that if in addition to that principal method of distribution, which must have accounted for the greatest bulk of the numbers, that these were also mailed to the ships and that they were distributed, say, by the captain of the vessels to the other mates, I don't think there is any clear reason to assume that this actually happened, at least as regards any great number of ships. It may live been the intention of the union to do so --

and the reason he knows it happened was, in the first place, he had given the orders -- the practice had been going on for years to do it and whenever a ship was laid up he would get the packages back and he knew it wasn't being delivered and give appropriate instructions.

MR. HALL: The order he gave goes to 1960 before he was president of the union.

THE COURT: I know but he as president of the union knew the practice of the union. If his testimony had been that he gave an order to do this particular job, it seems to me you would have a point. It would have to be proved the order went through and so on.

His testimony is that he is familiar with union practices and since 1966 this is what has been happening

to this paper.

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I don't see any reason to believe it happened any differently with this particular issue.

MR. HALL: His only personal involvement in giving such instruction, when he was a member of the editorial board in 1960 --

THE COURT: He kept on paying the bills for it.

MR. HALL: For the printing of it. It is not clear that he paid any bill for any large mailing.

THE COURT: That is what I understand he said.

MR. HALL: We don't have any bill.

I think it raises doubts as to why we don't have such a bill. What I understood him to say was he paid the bill for the printing.

I don't see how he knows and how he claimed to know that there was any actual mailing at all. Beyond that whether there was any actual mailing to any large number of vessels.

I get the impression from what he said there was mailing to some vessels.

THE COURT: My recollection of his testimony was that it was customary to mail them to all contract vessels and that was the practice of the union and he was confident it happened from, among other reasons, because whenever a

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ship was laid up and couldn't be delivered, the post office would return it.

MR. HALL: There could well have been instances of returns when they were sent only to a few ships. The question is were they sent to all the ships, more than a few ships?

Since he had never personally given any instruction to anybody since 1960 on this question I --

THE COURT: As president of the union he knew and he is in a position to know whether it is happening or not.

MR. HALL: The question of whether it was happening or not, it was certainly not a burning question for him as president of the union. It had little relevance to the politics of his own local or the business of his own local.

THE COURT: That gets to his credibility.

MR. HALL: I assume it is a question he paid very little attention to. It is possible he paid no realy attention to it since in 1960 when as a member of the editorial board he discussed seriously the question of distribution. From then on he had more serious things to do.

THE COURT: I can't agree with you that where a newspaper goes is solely concern to the president.

I would think it was of considerable concern. After all, a president's picture must be on it from time to time.

MR. HALL: This local was too democratic as a rule to contain pictures of its leaders. I hope it still is. I haven't really checked.

I submit this was probably not the most burning question that the president had on his desk. Whether or not Local 88 members were receiving it was important and whether patrolmen were doing their jobs was important. But whether the thing was going out to the captains of all these vessels around the country was probably not very important. Certainly as far as distance ports are concerned.

I think that in the absence of any more evidence that this actually was getting to the distant ports, we have to assume that it probably wasn't. Local 88 certainly has very little interest in the views of the mobile members largely because there was no point in transferring them to Local 88.

THE COURT: I mean that is a question of credibilit He testified quite clearly that is what he did. You cross examined him.

MR. HALL: He Cidn't testify that is what he did. He testified that is what he understood was happening.

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THE COURT: You cross examined him and I was impress with his testimony. Now as I have often observed, the Almighty has a nasty habit of not coming down and telling me when somebody is telling the truth or he isn't and I could be wrong. But he impressed me with his veracity.

And I find as a fact that his testimony was substantially correct and, therefore, that these documents were distributed as he testified, namely, to all the ships --

MR. HALL: I would suggest that his testimony as to what was done, since it was done outside of his own knowledge, should be either stricken or looked on as something other than evidence.

THE COURT: That is your motion, it is denied and you have an exception.

MR. HALL: Because I don't believe he was testifying as to anything he had direct knowledge of.

THE COURT: I will tell you, we have exhausted each other on that. As you so brilliantly displayed last time that I am not finally in this matter.

I will tell you what I am going to do. I am going to make a finding that the captain's testimony was true and that this document was distributed as he testified. I have no objection to an appeal, and if you plan to appeal, and you don't have to decide right now, let me know and

then I will hear briefs on relief because the Court of Appeals is entitled to get this case in a final package. If they reverse me on this finding they are entitled to know what the relief ought to be.

Unless you plan an appeal then I see no purpose.

MR. HALL: I would like to add one thing: That the defendant produced a resolution expressing the views of the members of Local 47 on the Great Lakes. I think it was dated June, I believe, of 1970, after this referendum was over.

MR. EPSTEIN: March.

MR. HALL: Certainly anything that had come their way -- I think the constitution had already been.

MR.WALDMAN: It was a contingent resolution.

MR. EPSTEIN: The resolution was dated March 6th.

THE COURT: That is a resolution saying we are going to pull out?

MR. HALL: I don't have it in front of me but it was my recollection it was later.

THE COURT: I have it here, I am told.

MR. HALL: It is noteworthy although they went into a lengthy account of all the reasons they could think of why the new constitution was too good, they never seemed to come up with any arguments which had been advanced by the

plaintiffs and the plaintiffs had sought to communicate with their fellow members.

MR. EPSTEIN: On the last page, your Honor, the date of the resolution.

THE COURT: March 6, 1970.

MR. EPSTEIN: It was not the later date Mr. Hall suggests. The later date was the covering letter when Captain Johnson advises that the resolution becomes effective due to the fact the constitution was passed.

MR. HALL: If it is March 6th then it doesn't enter into the point we are discussing because this is before the Local 88 Bulletin was distributed, if it was distributed. Because the only testimony as to the time when the Local 88 Bulltin came out that we have had gives us March as the time that this paper first appeared. I don't think anybody else testified as to when it came out, although it was the January-February issue, so titled. Nor do we have -- this March date is given us by a member of Local 88 who received it in the mail, immediately, that is in the most important mailing, namely, in this mailing of this paper to members of Local 88. As to the kind of advertising mailing or mailing to people who are not members of Local 88, when that occurred we don't seem to know. It certainly didn't occur by first class

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mail. If at all, I am sorry, it occurred by bulk mail or second class. I think we can surmise that and I am quite sure if we brought Captain Gaier here he would tell us whatever it was and that they did it in the cheapest way.

If it was mailed out at the end of March, or even later as it could have been because these are very bulky bundles, and we have heard testimony on the bundles --

THE COURT: - Second class postage paid in New York,

MR. HALL: Second class. I don't know the mailing system that well. Second class is periodicals Whether that is the cheapest --

THE COURT: It was then.

MR. HALL: Whether they were sent second class or bulk I don't know.

THE COURT: For what it is worth, the masthead said second class postage.

MR. HALL: I would think the individual copies to members of Local 88 would be sent first or second class.

THE COURT: Second class is as fast as first and the cost of first class would be prohibitive.

MR. HALL: When sent to vessels and picked up by vessels, a vessel between two points might not hit a port where it could receive such things for weeks or perhaps

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months.

The likelihood that it was actually received in the way that we are describing, the particular route of distribution that we have been particularly concerned with, name mailings to vessels, that it could have actually been received by those vessels or large numbers of them that are not in American ports, for instance, within the time necessary for the men to vote in the referendum is not great. I have taken an extreme example, of course, with the idea of vessels in the Pacific. At that time also Vietnam was a major place of call and Iran. The likelihood of the bundles of this newspaper being mailed out and received and then placed aboard the vessel as it came into the harbor where the mailing was received and distributed to the mates within time to vote in the referendum is not something we can take on faith. I would think it would have to be questioned.

How large a section of the membership is involved there I don't know, but I would say it would be substantial. Certainly as to the members who weren't on the vessels at all we have no reason to expect that the newspaper was distributed because we have no reason to expect that the officers of those other local unions would make a point of getting the issue of the Local 88Bulletin to those members.

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177 The only method of distribution, and if it was sent it was probably received by the recipient, is the route of distribution by mail to the vessels. As I say, the distribution by mail to the vessels is apt to be a very slow and uncertain thing just by the mechanics of it.

THE COURT: Incidentally, I would rule against the defendant on the other newspaper because that doesn't show that Mr. Sheldon, it is his views being expressed --

MR. EPSTEIN: Your Honor, I pointed out to you in one of those newspapers the exact views of Captain Sheldon --

THE COURT: They don't say it is his and I don't think it is politically equivalent if I am running for office to have somebody else express my views under their names isn't expressing my views, the mere fact that they are the same. I don't think that is an equivalent.

MR. EPSTEIN: I would argue the designation that this was an East Coast member, even though it doesn't refer to Captain Sheldon by name --

THE COURT: I don't think that is so.

MR. EPSTEIN: I would further argue, your Honor, even though unnamed the views of Captain Sheldon were not made known to the public that received The Sextant. I think in fact the substance --

THE COURT: That is where I disagree with you.

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MR. EPSTEIN: I take the same exception.

MR. HALL: I didn't mean to argue with your Honor over an issue which your Honor has already decided, but it struck me the mailing was probably a very slow thing.

As to the Local 88 Bulletin, of course, these are some of the points that Sheldon, Soto, Koonce, Hayes and Clifford, the members of the committee, sought to communicate. Some of those points are made in the Local 88 Bulletin. Of course the only connection with the committee, it happens one of the committee members is also a delegate and as a delet gate gets his picture on the front page. Certainly no member of the committee has a byline article or any article at all in the Locall 88 Bulletin.

THE COURT But his 88 Bulletin, it seems to me to quite clearly present the point of view and quite clearly identify who is presenting it. It obviously isn't what I would have ordered had this case been before me prior to the election, but then the Court of Appeals knew that that wasn't going to be my problem.

I may be in error but I am no longer in doubt. I will do is I will find as a fact on the basis of Mr. Gaier's testimony that the specific indications forth in the Court of Appeals supplemental opinion has been met.

Now, in the event, and this you will have to

decide yourselves Monday or Tuesday, in the event you decide that you want to appeal, then would you advise your opponent by Tuesday and within two weeks of Tuesday each of you have your proposed relief in my hands and each of you have proposed finds of fact and conclusions of law.

Off the record.

(Discussion off the record.)

MR. EPSTEIN: Thank you, your Honor.

MR. FALL: Than, you, your Honor.

THE COURT: Let them know by Tuesday whatyou want to do so they can get gearedup for their operation and let my chambers know.

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(Case called; counsel present.)

the papers submitted by both sides, and just to confuse tters I have reconsidered my factual determination.

At the hearing I was putting too much emphasis in my present view on the credibility of the witness which was attacked by the plaintiffs, and I still think that attack was unwarranted, and I thought the witness was credible, but the substance of his testimony I really don't think established that the union membership got the message through the newspaper he distributed.

As to that, it seems to me the plaintiffs' arguments are persuasive. At best these papers were sent to people who, if they wanted to, could have contributed among union members but quite likely were not motivated to distribute them among union members. As the Court of Appeals mandate seems squarely to put the burden of proof on the defendants on that issue I have modified or reversed my tentative finding of fact and find that the defendants did not bear their burden.

Of course, that really didn't make much difference in what I have to do now because in any event I was going to have to come up with a remedy for the Court of Appeals to consider, in the event they reverse, and

now I will have to --

MR. EPSTEIN: I do feel, in accordance with the mandate of the Court of Appeals, the defendant has met its burden with regard to distribution, as I indicated to your Honor in the papers that were presented to you at the conclusion of the hearing.

It seems if the Court of Appeals in fact wanted the same kind of distribution and the same kind of access to the membership list in connection with this referendum to have been the same as in the union election, they could have so stated, but it seems that the Court of Appeals mandate required something substantially less than that, and that is that there be the newspaper published to be widely distributed among the union membership.

THE COURT: That is what I don't think you proved.

MR. EPSTEIN: Your Honor, we did, I believe, show that there was more than sufficient number which were published -- that is, the 16,000 -- and that in fact they did go to all of those places where the union membership would have been likely to have received notice of it. That is, aboard the vessels and also to the locals of all of the organization.

We did also indicate, as was tratified to, that not only was there this Local 88 newspaper, which was being distributed to the membership, but also there was the Local 90 newspaper, which contained the views of the plaintiffs.

THE COURT: But my ruling on that, and I still adhere to it, is the Sextant doesn't count because it didn't identify the plaintiffs as being whind the views.

If I were running for Congress I would not consider that my views attributed to someone else were the same as my views attributed to me. Not that I ever intend to run for Congress.

MR. EPSTEIN: I think I pointed out to your Honor that in fact the views of Mr. Sayley were parenthetically shown to be the views of, I believe it was, the New York group who had been opposed to the new constitution and bylaws, and I felt that that was sufficient, as I argued to your Honor, to have bridged this gap, not specifically identifying the plaintiffs by name but rather the plaintiffs as a group, who they were, and also specifically actuall in haec verba setting forth the same complaint Captain Sheldon had in the other exhibit which was introduced to your

2 Honor.

I also felt, and I will repeat also, that
I thought that the action of Local 47 in disaffiliating
from the union in the event that the constitution would
carry was also indicative of the fact that the views
of the plaintiffs were being disseminated to the membership of Local 47, being the largest of the inland locals,
and the document of disaffiliation indicating that it
was Local 47's view and the view of the inland locals.
I felt that all of those were sufficient to supply
with the stipulation, as set forth in the mandate of
the Court of Appeals.

MR. WALDMAN: I know one normally doesn't hear more than one counsel on one side, but could I be heard for three or four minutes on that point?

THE COURT: Certainly.

MR. WALDMAN: I would like to address myself in supplement to two points Mr. Epstein made, on e dealing with the Sextant and the other dealing with the mode of distribution of the Local 88 paper.

I would like to recall to the court the posture of the case when it was first tried. You will recall that there were alternative requests made, or two kinds of requests made, by the plaintiff. One was cut out publication of their views in the newspaper

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which was distributed widely to the membership, and the other, which I think came after that was denied, to have the membership lists for individual letters.

THE COURT: That was in the union news-

MR. WALDMAN: That's right. I am going to argue from that point, because I think it is quite clear from the structure of the statute and what the Court of Appeals seemed to be concerned with that had the union newspaper been open to dissenting views the Court of Appeals would have been satisfied, given the fact that unlike an election case there is no specific mandate, this was basically a feeling of fairness that I think is implicit in everything that the Court of Appeals said, and because the union officers had distributed their views the feeling was that the opposing views should be distributed.

Now, let's assume that the union newspaper was administered as it now is under the new constitution and there is a space provided for opposing views, and let us assume that the officers' views had been presented by name in the codumns that were actually made available to the officers, and let us assume that the full substance of the opposing views was there in

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mda 7 opposition, as the union newspaper now does print.

But let's assume in all good faith the union newspaper had selected not the letters sent in by the plaintiffs but the substantively equivalent letters sent in by other members simply because they couldn't select every opposing letter and they had to do a job of weeding out and selecting, and assuming the full substance of those views was published in the newspaper, I would submit to your Honor that that would have satisfied the discussion and the holding of the Court of Appeals. Yet there would not have been the specific identification of any particular group except insofar as by the happenstance of selection their letters happened to be the ones printed.

I think if I am correct in that analogy, given the fact this is not one candidate against another but an issue as to the adoption of a constitution, it is not the identification of any particular member or group of members that the Court of Appeals was concerned with but the dissemination widely to the membership of the substantive views. I think on that there can be no question that the Sextant qualified because the views were actually verbatim the same.

The second point I would make as to the

fact that the Local *8 paper, which admittedly identified the plaintiffs and set forth their views as composed by them, was sent to people who might not have a motivation to distribute it, it seems to me that the most that can be said about that is that it has some application toathat distribution which went to the local unions, but I don't think it can be said, except by the sheerest speculation, to have application to the distribution which went to every contract vessel. That would be the equivalent of sending in a normal shoreside industrial company to every plant the number of copies at least equivalent to the number of workers at that plant, and sending it to the plant, only here you are only dealing with four or five people, and with a history of actual distribution.

I don't think there is any basis for assuming that when these newspapers go, as they did, periodically to the vessel, that there was either the means or the motivation or the fact of a suppression of those.

As I say, the most that one might make of that kind of an argument, it seems to me, other than on the basis of total speculation, has to do with those papers going to the local unions; but I think even if you were to disregard those entirely, those which went to every

industrial establishment where the members of this organization worked in sufficient numbers for every employee there do meet the test of the Court of Appeals and discharge the burden of the Court of Appeals placed on the defendants.

Thank you very much.

THE COURT: How do we know they got there in time to affect the vote?

MR. WALDMAN: I think the only thing that you can assume is that the probabilities are that they did better than mailings that would have gone to the home address of the individuals. I think you have to assume that the membership by and large is working. Not every member every time. The alternative is to send it to their home.

I think you have to assume from the nature of a work relationship of a work force that is essentially not idle at any particular three-month period, that the porbabilities are there is a greater likelihood it came to them if it is sent to the ships than if you followed the alternative mode that was suggested of distributing to home addresses, because if it went to their home addresses the likelihood is it would arrive later. This way it is likely to

catch them on voyages.

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There is no perfect system when dealing with a seagoing work population, but I think that this is better calculated to reach them earlier than home addresses.

MR. EPSTEIN: In connection with this,
your Honor, the timing of this election was during the
period of the Vietnam hostilities, when employment aboard
vessels was at its highest, when every available union
man was working on a ship. And in fact the union
relaxed its retirement procedures to permit people to
come out of retirement in order to be able to fill the
gap that was caused in the American merchant marine due
to this huge, sudden glut conshipping and a shortage
of licensed deck officers.

Your Honor, I have here Captain Johnson, who is the vice president of the union. He is sitting at counsel table. I would like to introduce him to your Honor.

MR. HALL: Your Honor, it is not really incumbent upon me to argue unless your Honor wishes, but I would like to point out there was testimony by Mr. Soto, which is unchallenged, that at any given time close to half of the membership of Local 88 was

on the beach -- that is, at home.

It is clear from the other testimony, for instance, Mr. Monroe, that many of the trips that people take are very short trips so they get back home in a week or so.

When the plaintiffs asked for a mailing, right to mail eit'er by putting it in the international list or by mail as it out themselves, what they are asking for is a right to mail to the home addresses. They already had an opportunity to mail their literature to the ships, they already had an opportunity to mail it to the local unions. For whatever good either of those things would do. What they are asking for is the right to mail to homes, which it would have gotten if it were included in the international newspaper. But it did not get to the men's homes except in the instance of members of Local 88 and perhaps a few others, a minority of the membership of the union.

MR. EPSTEIN: As I indicated in my papers to you, what Mr. Hall is asking for -- that is, the right to have it mailed to each individual home -- was not what the Court of Appeals said. The Court of Appeals could have said that, and they did have Mr. Hall's arguments before them at the time that they issued

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their decision. The Court of Appeals spoke not of each individual getting it at his home. And if you look at the other parts of the Court of Appeals' decision, your Honor, I think we do see the touchstone of what they were concerned with. In the footnote the Court of Appeals referred to the stiff-necked attitude of the union officials, and their concern I believe was that there was an absolute wall of silence that was being imposed by the union officials, those who were in favor of the merger, that there was a complete absence of any access by the plaintiffs in this case or by anyone opposing the constitution, and I think that was the concern of the Court of Appeals and I think it is reflected in their amendment to their decision when they did not say that it had to be a one-to-one kind of a distribution, as Mr. Hall would ask for, or as specifically set forth in the L & RDA concerning elections of officers.

THE COURT: Of course we are all speculating as to what the Court of Appeals meant. I have tried to make the record clear as to what I have found. I have found that the testimony of Captain Gaier was credible and I reaffirm that finding.

It is perfectly clear what he testified to,

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and if the Court of Appeals feels that that was adequate
to me its requirement that the membership be notified,
why, then, the Court of Appeals can very quickly say

so.

It just doesn't seem to me that in light of the objections the plaintiff has made it was.

can be wrong on that just as I was wrong last time.

Now, on the suggested remedy, however, I am very much impressed with the defendant's argument that whether we like it or not, the old constitution doesn't exist any more and the old structure that the constitution reflected doesn't exist any more, and that is water over the dam.

Therefore, it seems to me that what we should have is a yes or no vote from the entire membership as to whether they wish to keep the constitution as it now exists. If that turns out to be a "no" vote, then it seems to me the parties can turn to the court to fashion a decree directing a new constitutional convention. It doesn't seem to me that we can permit a third of the membership to block a constitutional convention and then leave us with no viable constitution and no possibility of ever getting one.

So that is my decision as to what the relief

should be, and I will hear from the plaintiff.

MR. HALL: I thought I took account of that in my own proposal, namely, that the constitutional situation could continue in effect for a period of time -- I suggested six months -- and enable the union to amend its old legitimately still-in-effect constitution within that time so that if it wishes to maintain something like the present structure it could do so without having to go back and forth.

I do believe that if it does not amend the old constitution, then it is inevitable that the old constitution be recognized as remaining in force.

I do think that the defendant, when it asks if we fail the first time, let us keep on trying and never have to face the consequences of our wrong, is simply asking to be left alone despite the fact that the referendum that occurred five years ago was improper.

I do think the union ought to, if it is going to follow the plan of deferring for six months or a period of time, instead of simply sending out the existing constitution, go through the entire process again just as an amendment to the United States

Constitution becomes void after a period of time if it hasn't been yet ratified by the states, so the action

of the 1969 convention, in making a proposal --

of the United States which abolished the states and then we proceeded to abolish the states and reorganized, instead of state governments, five great departments, that would take a little more than five years, let's say it took 10 years to do that, and then all of a sudden some district judge woke up to the fact this was all unconstitutional, the state governments all have in the meantime been dsimantled, and we just couldn't institute that.

MR. HALL: Just as the union didn't dismantle its local unions by merging them into one division, or into several divisions, it can by the same process, or a similar process, abolish the various divisions and create locals. If the membership should vote down a new constitution involving divisions, one of the things that it would be voting for would be voting for local unions, in favor of local unions.

Now, I have taken the position, and still take the position, that membership ought to have the right to vote on that kind of question separately from the others, but I wasn't successful in the Court of Appeals on that, so I will accept for the present

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argument purposes the Court of Appeals opinion that it is correctly set out.

THE COURT: That's very gracious of you.

MR. HALL: I am bound to. To send out an entire constitution, and the membership is bound by all the various details that are involved in that one bundle.

I say if the new constitution were put to a vote next month, or if a modified version of the new constitution approved by the convention were put to a vote next month, the membership just as conclusively could have voted for additions. Sure there is a forced vote in there, as I argued in the Court of Appeals that the members didn't have the chance to break it down into separate pieces. But if it is correct to vote for a bundle, then by rejecting the new constitution the membership must be said to have voted for the old constitution in its place.

I think there should be a consequence.

The idea of allowing it to continue just because we don't.

want to upset anything is harmful because it defeats

the decision of the court.

THE COURT: It seems to me that with all the water that has gone under the bridge or over the

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dam in the meantime, the relevant issue should now be:
is the membership satisfied with the situation as it
now exists, not are they satisfied with the situation
as it came into being. If they are satisfied with
the situation as it now exists, it seems to me that
ought to end the controversy. But they should be
aware that they have an alternative, and the alternative is that if they are not satisfied with the situation as it now exists, the court will direct the
convening of a constitutional convention for the purpose of framing a new constitution.

MR. HALL: May I point out the constitional convention occurs every three years in this union. There is one scheduled to occur this year. It was originally scheduled to occur in August. I understand it is now going to occur in September or October. They occur anyway. And directing them to hold a convention doesn't direct the convention to come up with something. A direction to hold a convention in effect does nothing that wouldn't occur in the ordinary course of events anyway, as far as I am aware.

THE COURT: There isn't time to do anything by August. You wouldn't be able to have

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this referendum through by August, it now being July.

MR. HALL: It could dopt the existing new constitution or a modified version.

MR. EPSTEIN: Your Honor, again I pointed out, I believe, in papers to you the problem about having this convention act or not act, that it might he spized upon again as a political means of attempting to, for whatever political purposes, forestall any possibility of any passage of anything new but rather a compulsion to revert to the old constitution, and I think that your Honor's suggestion does equitably seem more appropriate -- that is, if there is to be the current constitution continuing to exist, then let the membership decide if that is so. If not, then let the constitutional convention, or any convention, directed by your Honor, decide whether they wish to make any changes or what changes or what will be palatable to the membership if they can get some feedback from the membership as to which part is incorrect, and I think that what Mr. Hall is seeking would be something in the nature of almost an invitation to chaos, actually, where we have the one chance, and if not we have to go back to the other case, and I think there are so many elements that could be involved in just

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that one-shot election that it would be unfair to
the membership at large to permit it to go out on a
basis like that, and if I am relegated to arguing which
of these two alternatives there, I would strungly suggest, your Honor, that it be the one that you suggest.

Of course, I argued in my papers to you that I would hope that we could have avoided the necessity of any referendum but rather have considered the subsequent amendments that were passed by the membership to constitute a ratification munc pro tunc of the original referendum of the constitution that was originally passed.

THE COURT: It seems to me the plaintiffs' argument to that is valid, that that started something that they had to amend, and I can't assume they liked what they had to amend just because they amended it.

MR. WALDMAN: Your Honor, I must confess sitting here listening to counsel I am puzzled by one argument that Mr. Hall makes because I think it is contrary to what I understood to be implicit in your Honor's proposed remedy.

I assume under your Honor's proposal, if it is embodied in a decree, in the event the membership

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rejects the new constitution in a referendum and the court directs that a constitutional convention be convened, that court decree will direct that that constitutional convention formulate and come up with a constitution to be submitted to the membership.

Mr. Hall seems to be proposing the possibility that you will direct a constitutional convention to be convened which in turn will sit back and do nothing. I would assume that your Honor's proposal contemplated as part of your directive that that convention will be ordered to act as a constitutional convention does, namely, produce a constitution for submission, do the best you can. I would assume on behalf of defendants that they would not object to that being part of the remedy subject to their overall --

THE COURT: You correctly understood what I meant, and Mr. Hall has difficulty with that.

MR. WALDMAN: It seems to me that overcomes what he was contending.

THE COURT: Mr. Waldman correctly understood what I meant. Do you have any objection to it as interpreted by Mr. Waldman?

MR. HALL: I would suggest the objection

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they had to what I said could be corrected by the same means. There is a constitutional convention set for later this year. Mr. Waldman and Mr. Epstein expressed the fear that this convention might not be able to agree on anything and therefore --

THE COURT: You expressed that fear first.

MR. HALL: I have no desire to create chaos.

I think it would be appropriate for your Honor to
direct this coming convention, whenever it meets,
to come up with something to prevent, and to sit there
until it does come up with something.

THE COURT: That is what I will do in the event that the present constitution is disapproved.

MR. HALL: I am suggesting that should be done right now.

THE COURT: I understand your point.

MR. HALL: That would prevent the kind of obstruction Mr. Epstein thinks perhaps my plaintiffs might try to undertake, and I assure you I have no intention of undertaking any such obstruction.

What they do seek is to get a constitution which is not a bureaucrats' constitution but a constitution which reflects what everybody knows to be

the desire of the members, namely, a democratic constitution.

Mr. Epstein's idea that all the intervening amendments kind of now represent the will of the union has a certain surface appeal, but, on the other hand, I don't think it meets your point that you have got to amend a bad document doesn't mean you like how it is amended.

However, this constitution now as amended has been going for five years, and if a majority of the union membership likes it, I don't see why we should get upset.

MR. HALL: The membership plainly didn't like it very much in 1970, even despite the denial of opposition arguments and so on. Despite everything the official did, they carried it by a very small margin.

MR. EPSTEIN: We would submit that was because of the plaintiffs' actions.

MR. HALL: I don't think the membership should be forced to live --

THE COURT: The are not going to be forced.

MR. HALL: For an excess period of time.

I think there ought to be one referendum vote, and

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if whatever is put out to them is voted down, then they should be interpreted and understood to have preferred the old constitution.

THE COURT: For reasons which I have indicated I don't think that is a viable suggestion now. But you have made your roord and if the Court of Appeals agrees with you, you are in good shape.

Maybe you can agree on a decree to emtody these views. Try within a week to submit to me an agreed decree, and by agreeing to it neither side waives any objections or exceptions to what it ought to be. You don't waive any objections or exceptions to saying that the subsequent amendments should be deemed to have cured any defect. And of course you con't waive any objection to my failing to agree with you on the facts. I ag_ee you don't waive any objection you could have made here.

It seems to me a year should be enough to conclude this. The new constitution will stay in effect for the year unless it is shortened by order of the The new referendum should be held as soon as you agree it is feasible, and it shall ask the membership to either approve or not approve of the constitution as now in existence, and it shall make it clear to the

membership in the event they don't approve, the court will direct the convening of a convention which will have as its sole function the proposal of a new constitution, so that the membership knows what their options are. The form of the ballot shall either be agreed upon between you or proposals be made so I can settle it.

This thing, when it goes to the Court of Appeals it should be a complete package so they knew what is going to happen. Then if either side wishes to appeal there can be a stay to go to the Court of Appeals to act on it.

There is no reason for going to an election if the Court of Appeals feels it should be different than what they are doign; but, on the other hand, the situation should be such that the Court of Appeals knows exactly what is being ordered and there are no untied knots.

Is that clear?

MR. EPSTEIN: I believe so, your Honor.

THE COURT: Submit a week from tonight,

August 4th, an agreed order or two proposed orders.

It should include a copy of the proposed ballot. Everybody has an exception to what they don't like.

February 26, 1970.

To the International Officers IONHAP

T. F. O'Callaghon - President

Im. Galauch | - First Vice President C. T. Crooks - Secretary - Proseurer

Centlenen:

Addressing you through the Secretary - Treasurer of IOMASP Local 88, meting under the authority of local 83, we, the Committee Members, duly elected by the February/25, 1970 Regular Membership Meeting of Local 88, de hereby petition the Internstional Officers of IOMMEP to:

- provide adequate space in the upcoming issue of Tal. MASTER, MATE & PILOT newspaper for expression of the views of those Convention Delegates with opposed the proposed new Constitution at the New Orleans Constitutional Convention
- 2) advise how this petition shall be implemented in such freshion that the views of the opposition delagates who so desire shall be published in The MASTER, MATE & PILOT prior to such time as the ballets on the Constitutional Convention proposal are mailed to the Membership.

So as to fully implement the provisions of the present International Constitution, Article VI,

"Dutles and Rights of Members", Section 2 . "Every Meaber shall have the right to:

(i)/ Girevlate potitions on Union policy. Publish and distribute leaflets, newspapers, (5) and all other written meterial or present his opinions through other nodis",

the "Consittee" also petitions the International Officers to make provision for the distribution of the views of members on the New Orleans Constitutional Convention proposal to the entire Towner Merbership through on independent skilling service designated by the International Office.

Le understand that the cost of such distribution shall be paid in edvance. by members using this service and certifice by that independent weiling service.

Fraternally.

13/ Lloyd Sheldon, Cheirann Market

John N. Hayos John 1. Hayos 18/

A. A. Koonce Marie 18/

18/ Arthur Sohnen

18/ Victor Soto 60.600

PLAINTIFFS EXHIBIT 7

T. M. O'Callaghan - President

. . Calevell - First Vice President

C. . Crocks - Secretary-Tressurer

Merch 1, 1979

Sirs:

By electionedring letter of February 23, 1970, paid for out of the Union's treasury, you have told the entire had membership that of the forty-one delegates elected to the Convention, tairt; -four voted to recommend the Constitution to the we thership. These delegates who expressed dissent were in favor of minoty-five per cent of the document."

You lie in your whiskers. I challenge you before the membership to prove otherwise.

The sur total of the following objections:......

A 'uge les increase without projection for its use to be levied against to no pership of Locals that have administered their effairs in a fachion t t serves the merbership. 2)

. a corter of the proposed new super-subcommittee type executive board to Lary so-called emergency assessments against the membership without member-

daip sporoval.

The efet torial powers to be handed the International President, including 3) callors in of the Union's publication. (Democracy cannot survive is nation without a free press. You can be sure democracy can of a ryive in a . In where its official publication is controlled by a dict. cor.)

what the first of the first position of the Concret Executive Poord with will enable the Int. President, Executive First Vice President, and Secretary-Trussurer to exercise full power over the Union without any aircet accountability to the membership for their actions. (Durkin on 4) Convention record - "Vhatever my president wants...").
Fover of the three top International Officers to block a General Executive correlatived referendum or recall of International Officers.

The possibility of an inland or unlicensed member controlling 1400 officer Division licensed deck officer membership per capits votes as interactional President (or as Executive First Vice President or Secretary-kreeserer). 7)

The fashion in which Offshore Division by-laws were drafted by proxies ofter the Convention and contrary to the requirements of the present

International Constitution.

(5) Diluted ability of the membership to exercise full and final authority over the Union.

Authority of highest level legislative, executive, and administrative 9) bodies of balon not directly accountable to membership.

10) Apparentation of democratic safeguards.

1.1) Special interest waccling and dealing.

12) Inadequate time for membership to study deal before voting on it.

13) Selection of Lybrand, Ross Bros. and Montgomery to conduct and certify

PLAINTIFFSI EXHIBIT 7

balloting.

then 5 her cont of the real substance of the package. The difference is more like 1000 - and you damn well know it.

Your blathering about "JoB S-GURITY, UNION DE-UC-ACY AND DETOCRACIC THE HOS, bull's and Structure of Structure and PROTECTION OF REMBERRAL AS 148 (11) not stand scarcing examination. This is strictly another O'Galle her teacherous.

I do send that this letter to published in THE MASTER, MATE & PILOT before the bellots do out so that the membership lett the facts about why seven believed voted against the Convention proposal.

Locyclete Medicals

Lloyd Sheldon 3095 - 88 Convention Delegato

PLAINTIFFS' EXHIBIT 8

March 2, 1970

Mr. T. F. O'Callaghan President IOMM&P 39 Broadway New York, New York 10006

Dear Mr. President:

Our Committee sent you by letter dated February 26, 1970 certain requests concerning the conduct of the coming International election on the Constitution. We await your advice.

For your more specific attention, we forward to you the resolution of Local 88 by which our committee was created.

We now write further to suggest the development of certain safeguards to assure the lonesty of the election and, more importantly, to assure to all the members that the conclusions arrived at by the membership vote should be readily accepted by all members as the good faith and honest expression of the will of the members.

For these reasons we write to you to make mention of certain problems that have caused dissention in the past, with the hopes that they might be avoided in the future. Some of these are as follows:

We again repeat the request that as International President, you administratively arrange appropriate coverage in International media for the viewpoint of those who might be opposed to the referendum. Some International Unions, as a matter of regular protocol, make a center page in their International publications available to those who oppose, as well as those who propose particular positions. We ask that you give earnest consideration to this request.

Again, and administratively, we request that you make available for use the International mailing, list so that a committee, if it chooses, at their expense, mail their opinion to the membership or perhaps our Local Union might like to mail a special edition of our Local Union Paper, which could contain the points of view of the members of our Union.

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Mr. T. F. OCallaghan, President - TOMM&P

Cont'd.

As to the conduct of the election itself, I am sure you would join with us in wanting to make certain that everyone who voted was eligible to vote and questions in the past have been raised as to whether persons who have been recently initiated or reinstated were properly reinstated or initiated so as to be entitled to a vote.

So, too, there have arisen questions of the propriety of some persons certifying the eligibility lists of Local Unions. It has been contended that no person can be an officer of more than one Local and that, therefore, certification, for two locals by the one officer might be illegal. It seems feasible to us that a different officer in each Local could certify eligibility.

We also raised the question as to whether the accounting firm selected has the experience and training and some say competence, to act in a worthwhile capacity to assure a fair election. We urge you to be certain that everyone puts complete faith in, not only the integrity, but the competence of all concerned with the election.

With respect to all of these matters, we wonder whether it might not be appropriate to have the American Arbitration Association appoint an arbitrator to rule upon all prior contentions concerning the propriety of the plans for the election and any objections made by anyone upon the conclusion of the election.

This method has been used in Local 83 and while we are certain not all persons agree with the arbitrators rulings, nevertheless all would concede that they have had their day in Court, so to speak, been heard concerning their contention and then have had free discussion concerning its worth and a binding conclusion. You might wish to consider the worth of such a suggestion.

Certainly, if you believe that you yourself cannot do this because of the decisions of the International Convention just concluded, it certainly seems to us that the Elections Committee, on its own initiative, could select such a person to act as we suggest without any prohibition in the convention or in the old or new Constitution.

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Mr. T. F. OCallaghan, President - IOMN&P

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Finally, we raise the very serious question as to whether enough time has been given to all of the members of the International Union to study the proposed new Constitution prior to thereferendum being mailed out. Very few people have the final Constitution in their hands and relatively little or no time is left for them to get a copy and then disseminate their points of viewconcerning it, so that the membership when they vote would be adequately informed. This seems particularly unfair since the International Officers have had a copy of the proposed Constitution and some of them have already published their opinion and mailed it widely. This does seem to be an unfair advantage.

Finally, we respectfully request to meet with you at your earliest convenience to discuss the details of these suggestions so we may have your attitudes and areas of agreement, if any, and to report back to our membership on the success of our proposals and our meeting with you.

Fraternally,

Amarê Saone

PLAINTIFFS EXHIBIT 9

April 14, 1070

To: T. F. O'Callaghan, Prosident - 10414P

From: SPECIAL LOCAL 80 COMMITTER ON PROPOSED INTERNATIONAL CONSTRUCTION

Via: Local 88 Secretary-Treesurer F. F. Scavo

Dear Mir:

Your letter of April 2, 1970 is neither an adoquate nor timel, response to this Costittee's letters of Feb. 26, 1970 and Mar. 2, 1970. We do, however take this opportunity to respond to your letter, copy of which we received on Apr. 9 1970, as follows:

- 1) We have urged all those belegates to the New Orleans Convention who opposed the proposed new Constitution to submit their viewpoints for publication in the International newspaper. In keeping with the limitations on space mentioned by you (and in keeping with our original demands to you), we feel that the dissenting viewpoints of those Delegates can and should be given adequate space.
- 2) We continue to demand that the International make the International membership list available through an independent mailing service to individual membership of Local Committees elected for that purpose to inform the entire membership of 10 MeP of their viewpoints on the proposed new Constitution. We, of course, realize that at this late date your assent can only be of limited value to right the wrong done when you refused this demand in the first instance that is, before the ballots were mailed out.

Again we remind you that the three International Officers have already granted thousehoes that privilege.

37) he object to appointment of an arbitrator by Lybrand, Ross Bros. and Fontcovery for the same reason that we object to that firm as the agency to conduct this referendum.

to believe that Local 88 attorney John R. Harold has already made International counsel Schwartz aware of the procedures we would favor for selecting an arbitrator in whose importiality all can place confidence.

Further, we remind you that this is quite a standard procedure for settling upon an arbitrator. We trust that you will soon settle with us the question of the fair selection of an importial arbitrator since we now wish to raise further objections to the manner in which this referended is being conducted and as we continue to insist on reminding you of the objections in our letters.

We continue to await a complete response to our letters of February 26th and March 2, 1970 and, also, to this letter.

Fraternally,

Alayl Vheleton

cc: Capt. J. B. Guier

PLAINTIFFS' EXHIBIT 10

To: T. F. O'Callaghan, President - IOMM&P

April 14, 1970

DO: PROPOSED NEW CONSTITUTION AND RELATED MATTERS

Doar Sir and Brother:

As a Delegate to the IOMM&P Constitutional Convention at New Orleans who opposed the proposed new Constitution, I demand that an expression of my views on the balloting be published in the next issue of the International newspaper, as follows, and without any omissions:

STOP THE POWER GRAB, VOTE NO!

For the past two months the International Officers have standfastly refused to allow any expression of the opposition views to the proposed new Constitution in the International newspaper. Now, exactly one day after they were served with the summons and complaint in a suit brought by rank and file members to enjoin their referendum, those officials have changed their tune. They still refuse to make the mailing list available to members but, they say, they will make a little space available in the Union newspaper....not much, but some. That offer came a little late. Most members will have voted by the time any opposition views reach them through the International media.

But the fact is, this belated offer would not have been made if a suit had not been brought against the International Officers charging that they have deliberately misinformed the members as to the meaning of the new "Constitution" and deliberately kept the members uninformed as to what it will do; namely, that it will increase offshore members' dues to \$300 per year without a proportionate increase in services; set up the entire membership to be gouged by future dues increases and/or assessments to underwrite top heavy pay rolls for officials and presidential appointees; deprive the offshore membership of the right to self-government (other divisions will get same treatment if and when they are fully formed); set up a Shoreside Division to flood our Licensed Officers Union with unlicensed voters at cutrate initiation fees and dues obligations. There is no requirement that a candidate for International Office hold a valid license.

In our gult, we charge, alan, that

o Ballot contains fulse and misicaling information.

o Members who wanted to inform the entire membership of what the new Constitution means were donied access to the Union's membership list and mailing facilities and were even denied the right to examine that list for ineligible voters.

o More than two hundred (200) persons who have not gained membership legally are on the International's membership list and will receive ballots.

o International President and Eallot Committee refused to meet with a dulyelected and authorized committee of Local 88 members to consider reconmendations for safeguards against froud and to ensure fair and honest conduct of the referendum.

o International selected Lybrand, Ross Bros. and Montgomery, instead of one of several widely-respected firms engaged in business of conducting elections and referenda, to conduct said referendum because of knowledge on the part of International Officers of and concerning a criminal conviction of two national partners and an associate of that firm of the crime of certifying a false and fraudulent balance sheet.

International selected the firm of Lybrand, Ross Bros. and Montgomery to make possible improper practices in the conduct of the said referendum and for the counting and tabulation of ballots as would dony the members of IOMM&P the fair referendum to which they are entitled under the lar

and the International Constitution.

o Proposed new Constitution and proposed now Offshore Division breland contain many provisions which are ambiguous and in probable violation of law.

Englemally School Schoo

PLAINTIFFS' EXHIBIT 14

VIERNATIONAL ORGANIZATION :: MASTER / MATES :: PILOTS

APPRIMATED WITH AMERICAN FEDERATION OF LABOR AND COMORGIS OF INDUSTRIAL ORGANIZATIONS INTERNIATIONAL TRANSPORTMENTS FEDERATION & RAILWAY LABOR EXECUTIVES ASSOCIATION

THOMAS F. O'CALLAGHAN INTERNATIONAL PRESIDENT

CHARLES M. CROOKS GECRETARY - TREASURER

WILLIAM M. CALDWELL VICE PRESIDENT



39 BROADWAY NEW YORK. N. Y. 10006 WHITEHALL 4-0508

Cables BRIDGEDECK

April 2, 1970



CERTIFIED MAIL

Captain Frenk T. Scavo IOMMEP - Local 88 105 Washington Street New York, New York

Dear Sir and Brother:

In response to your letter of March 4th with Special Local 88 Committee letter of February 27, 1970, I have these observations:

- 1, We will receive written expression of all viewpoints with regard to the Constitutional balloting, . However, you can appreciate that the Special Local 88 Committee will have to be satisfied with coverage in the International media that is fair and equal to other Locals. I expect all Local viewpoints to be given equal opportunity for a reasonable presentation.
- 2. The International mailing list is the collective property of all of the individual Locals. In the absence of applicable law, it is not mine to release.
- 3. I expect the same procedure with regard to arbitrators to be followed in this election as was followed in the last one. You recall that Price Waterhouse appointed John Sweeney as Arbitrator, and afforded interested persons the right to submit challenges for cause.

Fraternally,

Captain Thomas F. O'Callaghan

International President

TOC: VW

cc: Captain Joseph B. Gaier



Official Organ of Local 88 International Organization of Masters, Mates and Pilots

VOL. XII, No. 1

NEW YORK, N. Y.

- 401

JANUARY-: EBRUARY, 1970

ON PROPOSED MM&P CONSTITUTION:

'88' Delegates Vote No



ocal 88 Delegates (1-r) Joseph B. Galer, Frank Scavo, Lloyd Sheldon and Ernest Hendry ook over proposed Constitution at IOMM&P Convention in New Orleans. Richard Polachek Constitution.

DERENDANTS EXHIBIT 6

50a

Local 88 Convention Delegates took the floor and vigorously opposed the newly proposed IOMM JP Constitution and By-Laws as undemocratic and unconstitutional.

Gaier, Frank Scavo, Richard Polachek, Ernest Hendry and Lloyd Sheldon also questioned the legality of the International President's method in arbitrary figure approved by drafting the Off-Shore By-Laws which were submitted without the approval of any of the Convention Delegates. This is contrary to the provisions of our present Constitution.

The Constitutional Convention was resumed in New Orleans at the Hotel Sheridan-January 31, 1970 where a welloiled international machine Shore Division. steam-rolled approval of the proposed Constitution by a vote of 7,870 to 2,861. Captains Rolla Johnson, President of Local 47 and Leo Wuesthoff, of Local 40, West Coast, joined '88' Delegates in leading the opposition.

٠

There was no vote taken on the By-Laws.

Undemocratic

"If the proposed Constitution and By-Laws are adopt- order to preserve their demoed," Gaier Stated, "all MM& cratic right to decide imporsince their organization was International Executives. founded."

Local 88 voiced the following objections:

• In the make-up of the General Executive Board where at present voting is by per capita, the voting power would be given to the 3 International on March 11, 1970 for the 90officials. Under the present Constitution these 3 have no vote with the exception of the International President who can vote to break a tie if one

· Under the new set-up mem-Local 88 Delegates Joseph bership dues would be increased to \$300 per year starting in October, 1970.

> The \$300 per year was an the delegates without any cost projection whatsoever.

> •Under the present Constitution, the per capita tax is voted on by the local executive officers.

Under the new structure, the 3 international officials would have 50 percent of the per capita vote. This would Charles from January 26 to leave no voice for the majority of the membership in the Off-

> An attempt was made on Saturday afternoon, January 31st, after the Convention was in session for 6 days, to have the Constitution voted on section by section. Captain Gaier 'ed the attempt but this effort was denied by those in charge of the Convention.

All Local 88 Delegates urge all MM&P members to read the proposed By-Laws very carefully and VOTE NO in P members will lose their tant issues in the future. democratic rights which they Otherwise, all major decisions have fought so hard to attain will be in the hands of a few

> A complete copy of the proposed Constitution and By-Laws appears in the centersection of this Bulletin for your information.

Ballots will be mailed out day referendum on the Constitution and By-Laws. The vote will be conducted by Lybrand, Ross Brothers and Montgomery.

Page 2

REPORT

Consolidation Terms ... "Unacceptable"

By CAPT. FRANK SCAVO, SECY.-TREAS.

The Joseph I.O.M.M.&P. Constitutional Convention held in New Constitution held in New Constitution

Purpose of the Convention was to overhaul the International Constitution, ostensibly to fit the needs of the newly proposed structure of (5) Divisions: Offshore, Inland, Pilots, Government Employees, and a Shoreside Personnel Division. The main fire of the Delegates was directed toward consolidation of the Offshore Locals (Atlantic, Gulf and West Coast) into an Offshore Division.

The I.O.M.M.&P. Membership totals 10,731 of which 8337 are Offshore members. The proposed International Constitution must be approved by a majority vote of the total membership voting in a mail referendum befort it becomes effective. The Offshore Division By-Laws will be voted on by Offshore Members only.

While it is true, that in recent polls, the membership has consistently voted in favor of the principle of merger, it was never implied that a merger should take place on any terms.

Consolidation, under the terms of this proposed document, will, for all practical purposes, give six officials, the three (3) International Officers and 3 Offshore Vice Presidents, full control of the affairs of the Organization. The International President will be granted powers usually bestowed on monarchs. Neither the actions of the so-called General Executive Board, nor those of the International President, are subject to approval, rejection, or consideration by the Membership.

It is even questionable at this point, what rights members may have to approve or reject Collective Bargaining Agreements, which will bind them for years. This is a power grab pure and simple, which is intended to serve those who will be in control of the membership, instead of the other way

DEFENDANTIS EXHIBIT E

There is no question that the Locals structure is not geared to compete in this modern maritime jungle; we need especially to consolidate the Offshore Locals to accomplish uniform contracts; one pension, welfare, and vacation program, uniform shippping rules and policy. But to accomplish this by setting up an Oligarchy as now proposed, would be defeating the original purpose and intent.

Last and by no means least, the architects of this Master Plan, beside themselves with a feeling of truly monumental achievements, have deluded themselves into thinking that this package is so downright appealing, that they have put a price tag on it.

If it is ratified by the membership, the dues rate for all Offshore Locals will automatically go up to \$300.00 a year (this represents an increase of 87.5% for Local 88 Members; no little cost for the priviledge of surrendering whatever democratic rights we now enjoy in shaping the course and policy of the Organization.

We have been under a Local structure since 1887.. I believe we can survive thus a while longer, at least until the terms of consolidation are acceptable. Approval of this package will be an acceptance of the Yoke of Dictatorship.

I join with J. B. Gaier, R. J. Polachek, E. J. Hendry and L. W. Sheldon, Local 88 delegates, to this Special Convention, in urging all members to vote against this power grab.

Convention Report

By Lloyd Sheldon, Convention Delegate

In addressing the Constitutional Convention in opposition to the terms of thet consolidation proposal and in protest against a serious procedural defect, I stated, on the transcribed record, as follows:

"I have argued in the past and shall continue to argue that consolidation of the power of the membership is essential if the Organization is to most effectively fulfill its responsibilities as a Union.

Consolidation of membership power is one thing—consolidation of the power of a handful of officials, or one official—is something else. One does not necessarily equate with the other.

The restructuring change before this convention will dilute the ability of the membership to exercise full and final authority over the Union. Where the highest level legislative, executive, judicial, and administrative bodies of any Union are not directly accountable to the membership for their actions, that membership must eventually lose control.

As a delegate to this convention from Local 88, I am mandated to work for consolidation of the offshore Locals into one offshore division. That does not mean that I am mandated to accept any terms or to surrender the democratic safeguards that have been fought for in Local 88 and were, in fact, achieved in 1950.

I am also adamantly opposed to this convention voting on any constitutional change in the absence of the by-laws under which it is to be implemented, or of denial of the right of any offshore Local delegate to vote on such by-laws as a delegate to this convention."

By-laws are an integral part of any constitution. Change of by-laws is an integral part of amending a constitution. The rights of the members were trammeled and the intent of the International Constitution violated when the International President appointed a special committee to act on new by-laws outside the purview of the delegates in convention assembled and, in fact, after the convention adjourned.

The by-laws that were drafted in this brazen, high-handed BACKDOOR fashion are designed to shackle this membership in a glorified trusteeship straightjacket if the consolidation proposal is ratified.

I urge you to vote it down.

Lesson in Unified Action

By James C. White. Patrolman

handful of it g-term, well en-trenched M. M. & P. officials thing to ratify? It is regretput on a spectacular display table that the same zeal which of concerted, unified action. vas so much in evidence when This demonstration of suc- the hard core establishment cessful, solid unity should was driving for their powerserve as an example for any control re-alignment, has been group interested in banding entirely absent in the cases of together to achieve a common the dry cargo and tanker goal. (For instance, the rank agreemnents, totally inactive and file membership in fight- since last June. ing the power grab.)

delegates have their respecplus severance pay, (at pres- leaguer to pinch-hit for Ted ent one month's pay for each Williams. year on the payroll), you must raise the ante to meet the bills.

Ir 88, we pay \$40 a quarter, President and Secretary Treawages, and have Masters licenses. Also, like the sea-go- and self-destructive. ing membership, they get no severance pay. A dues hike may be indicated, but from \$40 to \$75 is much too sudden a leap. At least 88 is solvent; our building, owned by the members, is fully rented and self-sustaining. (Also envied and coveted).

Part of this so-called "consoliation" package consists of \$35,000 yearly appointments. Who does our peerless leader think he is, fun city's Mayor Lindsay? An "organizer" with nothing left to organize would be in the same category as teachers in school with no oupils. (Which we also presently possess in the M. M. & 2.)

Currently, we have no con-At the recently concluded ract. With the same leaderconstitutional convention in hip, but a different "consoli-New Orleans, a comparative dated" set-up, plus more dues,

The local 88 convention American Arbitration Associ-The Group voted down the tive reports elsewhere in this to conduct the referendum, paper, so you are aware that choosing instead a three-hamthe "establishment" wants to ed company which, to most raise everyone's dues to \$75 a of the members, is shrouded qquarter, or \$300 a year mini- in obscurity. I cannot, and will mum (a key word). Of course, not, impugn the integrity of when you pay an official class, this little known agency. How-A Master's wages, (with or ever, the comparison comes to without a 3rd mates license), mind of sending a little

Following the example set by the power clique, the rank and file may yet upset this and the two top officials, the coup by acting in concert and voting a hearty, unanimous surer, receive class C Masters NO; any return of ballots less than 90% would be disastrous

Members Should Control Their Union

E. J. Hendry, Patrolman

I am thankful for this opportunity to thank the many members of Local 88 who voted to have me as their Patrolman and Convention Dele- Last July the M.E.B.A. gave gate for the next two years. its members a booklet outlin-I pledge to continue working ing and explaining all the for the best interest of the gains and benefits obtained membership and the Masters in June 69. Under the "Me Mates and Pilots.

man is asked when he boards M. M. & P. Booklet. a ship is "Can we have a copy Speaking of "Me Too", last of the new contract? or when November we were able to get will we get a printed contract? the companies to agree to pay It is now mid February 1970, overtime (at 4.23) for the seven months since an agree- night watches stood in a forment was reached between eign port on the day of sailing the Companies and the Union whether or not cargo is being covering the major issues of worked. On Holidays. Saturconcern. Wages, Vacations, days or Sundays the regular Overtime and Welfare but O.T. rate is applicable. This further meetings to finalize O.T. is retroactive to June 16. the contract have not materi- 1969

Now this same body of Offi- maximum after 15 years serpresent Constitution.

Under Article 6 Section 2(f) it states "Every member of the organization shall have the right to a copy of the Collective Bargaining Agreement under which he is employed." Too' clause our members are The first question a patrol- at least entitled to a similar

The M. M. & P. members Over three (3) months ago sailing under the M. S. T. S. Local 88's Officials with the banner are hoping that all the membership's permission sent Maritime Unions (N. M. U., the International and all the M. E. B. A., and the M. M. & Offshore Locals of the M. M. P.) will endeavor thru com-& P. a petition requesting the bined actions to obtain for negotiating committee be re- them the same vacations and convened within 15 days and retirement conditions enjoyed get moving on the contract. by the commercial segment This action resulted in one af- of the Merchant Marines. firmative reply from Local #4. Twenty-six (26) days a year cials want to Change our Con- vicing at sea is ridiculous in stitution when they haven't this fast moving day and age. lived up to the rules of the They ask if nothing immediate can be done to increase these vacation days some effort should be extended towards getting them the cost value for the difference between theirs and our yearly vacation put into their wages. Local 88 had five (5) delegates representing them at the Constitutional Convention held this January in New Orleans. This Convention was to prepare the constitution and by-laws to govern us if the Off-Shore Locals decided to consolidate.

The document that finally evolved from this convention was rejected by all of Local 88's Delegates—for instead of a document to consolidate the M. M. & P. and preserve the rights of the membership to control, choose and elect their Officials and control their destiny it appears to be a document drawn up to consolidate the powers of the Officials to control and manage the membership.

While many sections (in the proposed) are verbatim from the present constitution the awesome unlimited Powers of the President are beyond belief. The changes in the voting power of the old," International Executive Board", Executive "General new Board" are indicative of this Consolidation of Power. Under the old or present system the International Vice President and the SecretaryTreasurer had no voting rights on the International Executive Committee and the Int'l President could only vote to break a

The votes of the Int'l Executive Committee were alloted. pro rata to the Executive Officers of each Local. Under the proposed Constitution the International Officials will have at least 50% of the votes in any General Executive Board Meeting. From Zero to Fifty perdeent is quite an increase in power—in an organization such as ours it is tan-

tamount to dictatorial con-

trol.

The G. E. B. will consist of the Int'l President, the Int'l Vice President, the Int'l Secretary-treasurer and the Vice Presidents of the (1) Atlantic Coast, (2) Gulf Coast and (3) Pacific Coast. In all only six (6) members and 50% of this voting strength lies in the hands of three Int'l Officials or over 4,000 votes are controled by them. The rest of the approximately 4,000 votes is divided among the Vice Presidents of the various coasts or approximately 1.350 votes each. Think this over.

The Presidents salary upon the Adoption of this constitution will go to \$40,000. After this referendum the Presidents, Vice Presidents and Secretary-Treasurer's salary shall be determined by the Int'l Convention. Again, here the number of delegates, Official and rank and file, to this convention will be reduced and so an automatic increase in salaries can be expected.

Your quarterly dues will also be increased upon adoption of this constitution. The minimum Off-shore dues will be \$300 in Catober 1970. Who knows what the minimum dues will be in 1972 or what the job opportunities will be in 72 or next year for that matter. Would that any increase were used to obtain Congressional Legislation for an expanded adequate American Merchant Marine with expanded job opportunities rather than expanded Official's salaries.

Your Delegates to this convention could not vote for consolidation under these conditions. I am sure that the majority of the M. M. & P. membership will reject consolidation for the same reasons. Further information on the proposed Constitution and the referendum will be found in this issue of the Bulletin. Please look it over carefully.

DEFENDANTIS EXHIBIT E

LOCAL 88 BULLETIN

January-February, 1970



Delegates Scavo, Gaier, Hendry and Sheldon (above) take special note of sections of proposed Constitution which would delegate too much power to a handful of International Officers.



I.O.M.M.&P. LOCAL 88 REGULAR MEMBERSHIP MEETING-FEBRUARY 25, 1970

President J. B. Gaier reported:

Attended recent meeting of M.A.T.E.S. (training program) Trustees Meeting; They have not found, as yet, a suitable site for the Training Base; It is expected that the Training Program will go into operation again in January, 1971.

Also attended Pension & Welfare Trustees Meeting. Benefits for Pensioners referred to next meeting of Trustees; Trustees evaluating cost of a "catastrophic benefit" for all covered empioyees; Trustees also working out a plan to make welfare payment directly to hospital instead of employee or dependent being required to pay the bills.

Trustees considering printing new, updated Pension & Welfare booklet. M.M.&P. Pension Fund rated in the top 30 private employer pension funds in the country. At last report, assets totaled more than \$50,000,000. After some questions and debate from the floor it was duly moved/seconded carried to accept the report.

Secretary-Treasurer, F. T. Scavo Reported:

Local 88 Membership as of February 25, 1970-2200

Reported on the income and disbursements for the month of January, (copy of the report post-Ad on Bulletin Board).

Attended recent Pension & Welfare Trustees Meeting; Could not understand why Trustees are delaying putting Pensioners' benefits into effect; This benefit was agreed to in the last Contract Negotiations.

Advised Local attorney of action taken by Local 88 in an attempt to obtain our share of the 15c per man per day benefit, related to the cost of defraying hiring hall costs.

Scavo pointed out that he made the motion at the Special Convention designating the American Arbitration Association to conduct the current International Referendum; the motion was defeated overwhelmingly. Whereupon, by more than a 2/3 majority vote. the delegates agreed on the Agency of Lybrand Ross, Bros. & Montgomery.

Ballots for the current International Referendum will be mailed March 11th.

After much discussion on the Agency designated to conduct the balloting, a motion was made/ seconded and carried to accept the

Patrolman, J. C. White reported:

Alternating patrolling on various waterfront areas; encountering mostly routine beefs, such as food, division of wages, etc.; taking an active role in campaigning against consolidation.

M/S/C to accept his report.

Newark area. Mostly routine beefs. gard so highly. Finds little support on vessels for

consolidation as proposed.

M/S/C to accept the report.

Motion by M. Warn #1858-88, Amos Koonce #5832-88:

"Be it Resolved, that Local 88, I.O.M.M.&P. take legal action, if possible, to hold in abeyance, balieting on the proposed change of Constitution necessary to implement consolidation until it is legally established that United States Law and the International Constitution were compiled with in all respects in the Constitution Convention action to revise/and or amend the International Constitution and that all procedures related thereto, including formulating and drafting by-laws for the Offshore Division were legal and constitutional".

After much discussion, the Resolution was carried unanimously.

New Business

The following Resolution submitted by J. Hayes #10717 and seconded by F. Hiza #9927:

"Whereas if early action is taken to inform the entire International of the deficiencies of both the newly proposed Constitution and the manner in which the referendum is to be conducted, it may very well be possible that the membership will defeat this new Constitution

Whereas we feel the new Consti-Patrolman, E. J. Hendry reported: tution eliminates the democratic Covering New York and Port procedures and safeguards we re-

(Continued on Page 3)

Minutes of Meetings

(Continued from Page 2)

Therefore be it resolved that at this regular membership meeting a committee of five men shall be elected to defeat the proposed International Constitution.

duties.

Duty #1 To petition the International Officers for adequate PIILOT newspaper for the expression of the views of those Convention Delegates who opposed a regular membershir meeting. this new Constitution.

membership of the International of our objections to this Constitution by the publication and distribution of literature opposing this new Constitution.

Duty. #3 This committee shall also investigate possible means of assuring itself that the referendum on this new Constitution is conducted properly, particularly in regards to insuring that the will of the Membership is not fraudulently represented.

Be it also resolved that this committee is empowered to seek the advice of Local 88 counsel on these three matters and to take steps within the structure of the International Organization to discharge the above three duties.

Warn/Koonce Resolution contin-

However the Committee shall not seek redress in any court until in They shall have three principle accordance with Article XVIII Section 6 of the International Constitution it has exhaused its rights of appeal under the laws of space in the MASTER MATE & this Organization and the membership shall approve of the course of action they then recommend at

Each nominee will be instructed Duty #2 To inform the entire by the Chairman of the meeting to stand while his name is being considered for membership on this committee to defeat the new Constitution.

> Whereupon the Resolution was entertained, discussed, and adopted unanimously.

Chair calls for nominations.

accepted
accepted
accepted
declined
accepted
declined
accepted

M/S/C that. Sheldon. Koonce, Hayes, Sohen and Soto stand elected by acclamation.

FRANK T. SCAVO, Ssecretary-Treas. & Recording Secretary

I.O.M.M.&F. LOCAL 88 REGULAR MEMBERSHIP MEETING—FEBRUARY 11, 1970

Local 88 Delegates: J. B. Galer, F. T. Scavo, E. J. Hendry, L. W. Sheldon, present, Delegate R. J. Polachek on Vacation. The Delegates reported in the order listed above.

Delegate Gaier reported that all Local 88 Delegates, Local 47 (inland) and Local 40 (Pilots) voted against the proposed changes to the International Constitution. Total pro rata vote was For 7870 Against 2861, more than the 2/3 majority necessary to get it on a ballot. Gaier pointed out the re-

Board and Method of Voting; Election Procedures, with a run off election if either candidate fails to receive 40% of valid ballots counted, Duties of the International President under new powers will be Editor of the Masters Mates & Pilots Paper; Convention action designated Lybrand Ross Bros. & Montgomery as the balloting agency to conduct the referendum;

Dues of offshore Locals to be increased to level of \$300.00 per yr. Effective 1-1-72 all excess monies over operating costs will be forwarded to International Office.

Delegate Scavo reported that he was against the terms of the merger even though recent polls of the membership indicated a desire for merger in principle. Under the new structure if ratified, the control of the affairs of the Organization would be vested, for all practical purposes, in 6 Elected Officials: three International officials and the 3 offshore Vice Presidents. There is little or no room in the document for the membership to affect Changes in Major policy matters. Pointed out that he opposed a blanket increase in dues up to \$300.00 for all offshore members. The delegates were not shown any facts or figures which would warrant this increase, taking into consideration a gradual shrinking of offshore membership once the 1.5 members, for each Contract job formula.

This represents an 87.5% increase for Local 88 members. Combine this with our present gain over operating expenses, Local 88 will be required to direct approximately \$400,000.00 annually to the International office.

Delegate Sheldon reported:

Emphasized lack of Control by the membership; suggests that the \$300.00 dues for offshore members is only the beginning; the General

Executive Board will have power of Levying an assessment; no provision for rank and file manibers on the negotiating committee, questions the procedure on promulgating offshore Division By-Laws.

Delegate E. J. Hendry reported:
That he was in substantial agreement with the previous delegates report in that the document would centralize power at the top, and deny the membership of most of their democratic rights; was unalterably opposed to unreasonable offshore dues increase.

Motion by R. A. Brown, Seconded by S.Spinelli to accept the Combined reports of the delegates

Many questions from the floor unanswered by the delegates. M/S/C to close discussion. Motion to accept the delegates report carried.

Motion by M. Warn, Seconded/ carried to continue the suspension of order of business to act on a Resolution regarding the special Convention action:

Whereas, the vote by 1968 mail referendum "in favor, in principal of consolidation of the Locals into four divisions" is no commitment what so-ever by the membership to consolidation on unacceptable terms, and

Whereas, the dubious proposal by the 1970 New Orleans Constitutional Convention brazenly invites the membership to surrender the real power of the Union to the International President and super International subcommittee,

Whereas, surrender by the membership of control of the Union can only result in dictatorial abuse of power at the memberships expense, and

Whereas, the elected delegates from Local 88, Gaier, Scavo, Polachek, Hendry and Sheldon vehemently opposed this convention proposal.

Now, therefore be it resolved that this regular membership meeting of I.Q.M.M.&P. Local 88 go on record as opposed to the New Orleans Constitutional Convention proposal for consolidation of the Locals and urges that all the power of Local 88, including administrative, legal and editorial, be directed accordingly. Copy of this resolution to be sent to all Locals and request it be posted on bulletin board.

After some discussion, the resolution was carried unanimously.

GREAT LAKES and RIVERS DISTE In Organization of Supervisory Personnel + 2415 TEPMINAL TOWER + CLEVELAND, OHIO 44113 + PHONE 216: 241 06

June 23, 1970

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. Captain T. F. O'Callachan Int. Pres. International Organization of Masters, . Mates and Pilots 39 Broadway New York, N.Y. 10006

Dear Captain O'Callaghan:

It is my understanding that the International Ballot Committee has declared that the membership has voted approval of the Constitution revision which destroys the autonomy of the Locals affiliated with the International Organization of Masters, Mates and Pilots.

It is also my understanding that the validity of this election will be challenged in court.

Pursuant to resolution adopted by unanimous vote of the Local 47 Convention upon unanimous recommendation of the Executive Board and by overwhelming vote of the membership of Local 47, you are hereby notified that as of the date the amended constitution is declared effective by the International Executive Committee, Local 47 is no longer affiliated with the International Organization of Masters Mates and Pilots.

A copy of the Resolution is annexed hereto.

Fraternally yours,

6/4/73

Captain Rolla R. Johnson President

RRJ/aj

RESOLUTION

District, affiliated with International Organization of Masters,
Mates and Pilots, and a majority of the membership of the
inland locals, have consistently and vehemently opposed
dissolution of locals and transference of their powers and authority
to divisions subject to the control of International officers; and

whereas, Local 47, Great Lakes and Rivers District, has both inland and offshore branches; and

Whereas, the International has failed and refused and fails and refuses to recognize the status of Local 47 as both an inland and offshore local; and

whereas, the delegates of Local 47 to the recent International Convention at New Orleans, together with delegates
of other locals, inland and offshore, voted against the radical
restructuring of the international proposed by the International
officers and adopted by majority vote of the delegates at the
Convention; and

Whereas, the membership of Local 47 has carefully considered and analyzed the terms of the new International Constitution proposed for adoption by the membership; and

Whereas, said proposed new Constitution would destroy
the existence, status, autonomy and authority of Local 47 and
the historic and fundamental relationship between Local 47
and the International, among other things by:

- (1) Substituting Divisions for Local Unions as the subordinate bodies which constitute and govern the International. Article XII, Section 1(b) of the proposed Constitution specifically provides that "The amalgamation of locals in the course of formation of Divisions will processarily result in the Division replacing all amalgamating Locals." Accordingly, under the proposed Constitution Local 47 will cease to function or exist as an independent entity or autonomous unit. The proposed Constitution further provides that the Local Unions will cease to administer their contracts and that "provision has been made for administration of the collective bargaining agreements of the Locals." Accordingly, Local 47 would cease to administer its own collective bargaining contracts. The proposed Constitution further contemplates and requires "disposition" of the assets of each Local Union;
- (2) Destroying the jurisdictional integrity of Local 47.

 The proposed Constitution would divide the membership of Local 47

 between different Divisions, i.e., the offshore branch members

 would go into the Offshore Division, the pilot members with the

 pilot's Division, the government employees with the Government

 Division, and the inland branch members into the Inland Division.

 The members of each branch of Local 47 joined together into a

 single local to protect and advance their mutual interests.

 Splintering of Local 47 into different Divisions would defeat

 this interest of Local 47's membership;

deprive the membership of Local 47 of the autonomy and authority it now enjoys under the current Constitution. The membership of Local 47 is currently represented by its own delegate on the International Executive Committee, and is thereby vested with a voice and vote on all matters over which the International Executive Committee has jurisdiction, including, among others, issuance of charters, questions of jurisdiction, and removal of International officers. Under the proposed constitution, the International Executive Committee is abolished and its powers are vested in a General Executive Board consisting of the three highest International officers and the vice presidents of the divisions.

whoreas, proposed destruction of Local 47 as an independent entity by the International constitutes so fundamental a breach of the premises of the relationship between them as to frustrate the purpose of affiliation by Local 47; and

Whereas, the current Constitution of the International recognizes the right of Local 47 to disaffiliate; and

Whereas, the membership of Local 47 desire (1) to maintain their independent indentity and authority; (2) administer and emforce their own contracts, and persion and welfare plans, hiring hall and education plans; and (3) preserve and use their assets, all of which result from the contributions of members of Local 47, in their present form and retain their beneficial interest in those assets; and

Whereas, the membership of Local 47 recognize that the aforesaid rights would be abolished and the aforesaid desires frustrated by the proposed new International Constitution;

Mow, Therefore, be it and it is hereby resolved, that in the event the requisite majority of the International membership vote to approve the new Constitution (1) Local 47, Great Lakes and Rivers District, of the International Organization of Masters, Mates and Pilots, shall thereby be deemed immediately to have terminated the relationship between Local 47 and the International and Local 47 shall no longer be affiliated with said International Organization of Masters, Mates and Pilots; (2) that from that moment forth, reference to the International will be attricken from Local 47's books and records and the Local shall be known as Local 47, Great Lakes and Rivers District; (3) Local 47 shall take any and all action necessary and appropriate to protect and defend the institutional rights and interests of its membership.

By-Laws Committee of Local 47 shall prepare and submit to the membership for ratifi ation revisions of the Constitution and By-Laws of Local 47 to effectuate this resolution.

Adopted by unanimous affirmative vote of the membership of Local 47, Great Lakes and Rivers District, International Organization of Masters, Mates and Pilots, in Convention assembled, March 6, 1970. ATTESTED:

1st Vice President

THE SEXTANT

Page 4

Membership Comments

We wish to have the Committee Report of Headquarters' Constitution Recommendations and Amendments and its acceptance by the Headquarters Membership at the meeting of the membership of November 26, 1969 printed in the next issue of THE SEXTANT in its entirety including the final vote of the Headquarters Local 90, November 26, 1969, of 54 to 5. This may be printed under Membership Comments.

Harfold H. Sahlin #11465
M. Amber #8953
R. K. Moore #10529
H. Andersen #11803
M. Krainer #3381
V. W. Pixley #8888
E. V. Hailey #11031
Local 90 Consolidation Committee of S. F. Headquarters
Committee Meeting of
November 24, 1969

Committee elected H. Sahlin #11465 — Secretary, Chairman. Committee studied recommendations of Constitutional Convention at Atlantic City, New Jersey held in the week of September 22, 1969. This Coastwise letter of November, 1969 was distributed to the membership of Local 90, M. M. & P. After a close study the Committee Members recommended the below Recommendations and Amendments.

- 1. To move January 26, 1976.
 Convention Meeting ahead at least 6 months to give more time for study of all recommendations and amendments. We don't want to be "steamrollered" into an important change without a complete study.
- Nominations for the International Office should be made by a petition of 10

members instead of 50 or a 100 members.

- We prefer a 2-year term of office instead of 3 or ** years.
- 4. Local 90 should keep the present structure of officials as we are already set up like a district. The East Coast locals should be set up as a district. The Gulf Coast locals should be set up into a district. The Great Lakes should be set up into a district. These districts should have the structure we already have, with no International Officers heading each individual district.
- 5. Each district should retain its Local autonomy in every way possible, particularly in regard to negotiations, so as each district can bargain independently with each district's own officials bargaining along with their own rank and file members as Local 90 now does, with 5 officials and 6 rank and file. Our local conditions are different and the cost of living is higher than on the East Coast and Gulf, so therefore, it is better to do our own bargairing. Also, we don't want 'ie preponderance of a degotiating team consisting of officials. (That would be 5 or 6 more officials than rank and file, under the new set-up.)
- 6. We believe and recommend each district should retain ownership and control of all its present buildings and all its present assets. Otherwise, eventually all its money will gravitate to New York.

- We recommend against the Super-International of (officers of the Offshore Division) which weakens our autonomy and puts International rule over the West Coast District.
- 8. We recommend against the Super-International of the proposed Int. Executive Committee of six officials cutting up the pro-rata share of Offshore per-capita vote. This will put power into too few hands.
- The Offshore Division's Executive Council also bears a closer study by our delegates.
- 10. We recommend against the Government Employees Division set up as the director of the Division will be a member of the negotiating committee which, in turn, will enable him to sit in on our negotiations. Also our stronger group system and Section II in its entirety will be gradually eroded with a consolidation into districts, particularly with the Government Employees Division a part of the Division setup.

11. We recommend that we continue to elect our officials locally by Local 90 members and not by International vote after first elections as proposed by Atlantic City Convention. We do not like 8,000 votes on East Coast and Gulf against our 2,000 votes deciding the elections of hand-picked East Officials ruling us without control over them. We have control of Officials now.

Therefore, this Consolidation Committee unequivocally and unanimously recommends all the above recommendations and amendments to the Local 90 M. M. & P. Membership and respectfully asks for its acceptance and approval by the Local No. 90 M. M. & P. membership.

This Committee also recommends and asks the Local 90 M. M. & P. membership to instruct our Loci 90 delegates to the Constitutional Convention of January 26, 1970, to study and expidite this Committee's recommendations and amendments.

/s/ Harold H. Sahlin #11465 /s/ Gordon Pitt # 4069 /s/ Ernest J. Kaulfuss # 2897

(Editor's note: Following is the Coastwise re-cap of the vote on the Committee's Report:)

Headquarters Seattle Portland Wilmington

TO CONCUR	NON-CONCU
77	5
i	39
10	-65
87	184

THE SEXTANT

Membership Comments

In the last issue of SEXTANT the report of the Local 90 Constitution Committee was printed under Membership Comments. As Chairman of this Committee, I think it is now important and appropriate in view of the threat to the Local 90 Membership of consolidation under the form as recommended by the Atlantic City Constitution Convent of December, 1969, to add some more recommendations in addition to the recommendations of the Constitution Committee. These further recommendations against consolidation are:

1. I recommend that the run off for International Officers be retained as against the International Convention recommendation wanting to dump the runoff.

2. I recommend that in case that the Consolidation vote should pass that all our present funds and assets up to the date of consolidation be divided amongst the membership to pay their duer for a certain number of quarters or years according to a member's length of membership in the Organization. This recommendation has been suggested by certain members in Local 88. This will prevent our funds being dissipated by all the various suits against various Locals up and down the East Coast and Gulf I don't like Long cal 90. the rich uncle of MM&P Organization, having to pay the tab for these suits.

3. I recommend against consolidation because the pay of the Officials will double and accordingly their pension will escalate into the \$2000 or more a month bracket and naturally this will cause our dues to double when the membership can ill afford the raise with a drastic cut-back in jobs due to automa-

tion and de-escalation of the Vietnam war.

If this is what you want, Brothers, vote for consoli ation, Otherwise vote against consolidation.

/s/ Harold H. Sahlin, #11461 E. V. Hailey, #11031 J. M. Plant, #10580.

THE SEXTANT

February-March, 1970

Membership mment

I have read the entire proshore Division. I urge all members to vote NO on the forth-coming ballot for ratification.

Reasons:

1. You as rank and file members would lose what little say you now have in the affairs of this organization - but YOUR OBLIGATION TO THE OR-GANIZATION WOULD BE IN-CREASED.

For instance:

Membership ratio to contract jobs initially set at 1.5 to each contract job may be changed by the general Executive Board WITHOUT the approval of the membership. This will invite the evil of dues paying revenue membership to support the four new full time paid officials and the new offices, staffs, clerical help and expense accounts provided for in the proposed Constitution.

2. At International Conventions, rank and file observers could be denied the right to attend Convention proceedings. _nd

Rank and file members wish posed Constitution of the In- ing to attend Committee meetternational Organization of Mas-ings CAN NOT do so - unless ters, Mates and Pilots and the a majority of the Committee proposed By-Laws of the Off- voted to allow them to attendtry and get officials to vote to let you watch them in Committee. However, our present Local 90 By-Laws give all members the right to attend any and all meetings of all Committee meetings

3. A new International Executive Vice President's job shall be a full time paid job-at \$35,-000. In addition there will be created 3 more full time paid officials -- these are the Offshore - District Vice Presidents. Three more paid officials we do not now have - total of 4 new full time paid officials.

The salaries proposed are as follows:

International President: \$40,-000 per year.

International Exec. Vice President: \$35,000 per year.

International Secretary-Treasurer: \$35,000 per year.

Rank and file members will not have a vote to determine any changes to these salaries.

No wonder they propose to us that we increase our dues by \$100.00 a year to make yearly dues \$300.00 - and that is just a start.

4. There is no nepotism clause in either the proposed Constitution or the proposed By-Laws of the Offshore Division — hence nothing to prevent the officials from putting their wives, brothers, sisters, cousins, etc., on the payroll — or prevent the officials from purchasing goods or services from a near relative.

See Article XXV of Local 90's By-Laws for an example of what is missing from these proposals. One only needs to remember the recent United Mine Workers troubles.

- 5. Only the International President may appoint lawyers, assistants, secretarys, etc., as office help and only the International President may DETERMINE THEIR SALARY. Hence these hired people will be under obligation only to the International President and NOT to the Organization and its rank and file members.
- 6. The General Executive Board is so made up so that the 3 International Officers control the affairs of the OFFSHORE Division (of which Local 90 would be a part).
- 7. YOU as a member would have no say or vote in the buying or selling of any Union Buildings or property, since only the General Executive Board has the right to lease, sell, or mortgage the property of membership—and to set special assessments on the members.
- 8. International President would have authority to waive all or part of initiation fees—thus providing for favoritism tosons or friends of his or sons of Company Officials.
- You as a rank and file member COULD NOT propose by petition that an International Official be recalled.

10. You as a rank and file member COULD NOT propose an amendment to the International Constitution by a petition.

Only the By-Laws of the Offshore Division can have proposed amendments considered as a result of rank and file petitions and then 15% of the total offshore division members (West Coast plus Gulf Coast plus Atlantic Coast) or approximately 900 signatures.

11. Where are the rank and file safe guards and the so-called "Union Democracy" talked about by those who want this new Constitution ratified the most—the present 3 International Officers".

12. It should be noted — that all the officials of Local 88 have come out strongly against this proposed Constitution and Offshore Division By-Laws.

In the past, I have been in favor of the idea of consolidation of the International Locals. I'm still very much in favor of the idea. But these proposed Constitutional provisions and By-Laws provisions are not consolidation as we thought they would be-rather the proposals really provide for the CONCENTRA-TION OF POWER in the hands of three men whom the membership cannot control or recall once they get in office. The International President as Editor of the International paper would control everything going into it and be able to slant the news.

To quote from the January 19th issue of TIME MAGA-ZINE:

"Beyond private sin, however, those who misuse public trust do a special evil ... (and) seem to justify the theory of democracy that argues not that the people are virtuous enough to rule themselves, but rather THAT NO MAN IS EVER VIRTUOUS ENOUGH TO BE ALLOWED FOR LONG TO RULE OTH-ERS."

Vote down this proposed Constitution and the By-Laws of the Offshore Division as proposed—so that the officials will be on notice to submit a revised Constitution that will bring about the good of consolidation without the evils which seem to be contained in the document they have written.

Franks by:

V. G. Valentine #11610
James E. Phifer #11875
Ralph Bertani #3330
Carl H. Engel #11759
Clark Swarthout #11667
F. T. Colibriss #11781
R. Moore #1843
George Beresford #3516

To the International Officers
IOMM&P:

T. F. O'Callaghan, President Wm. Caldwell, First Vice Pres. C. F. Crooks, Secy. Treasurer

By electioneering letter of February 23, 1970, paid for out of the Union's treasury, you have told the entire MM&P membership that:

"of the forty-one delegates elected to the Convention. thirty-four voted to recommend the Constitution to the membership. These delegates who expressed dissent were in favor of ninety-five percent of the document."

I challenge you before the membership to prove otherwise. The sum total of the following objections: . . .

- A huge dues increase without projection for its use to be levied against the membership of Locals that have administered their affairs in a fashion that serves the membership.
- (2) Authority of the proposed new super-subcommittee type Executive Board to levy so-called emergency assessments against the membership without memberapproval.
- (3) The dictatorial powers to be handed to the International President, including editorship of the Union's publication. (Democracy cannot survive in a nation without a free press. You can be sure democracy cannot survive in a Union where it official publication is controlled by a Dictator).

- (4) Structure and division of voting power of the General Executive Board which will enable the International President, Executive First Vice President, and Secretary-Treasurer to exercise full power over the Union without any direct accountability to the membership for their actions. (Durkin on Convention record—"Whatever my President wants...").
- (5) Power of the three top International Officers to block a General Executive Board initiated referendum or recall of International Officers.
- (6) The possibility of an inland or Unlicened member controlling 1400 Offshore Division Licensed Deck Officer membership per capita votes as International President (or as Executive First Vice President or Secretary-Treasurer).
- (7) The fashion in which Offshore Division By-Laws were drafted by proxies after the Convention and contrary to the requirements of the present International Constitution.
- (8) Diluted ability of the membership to exercise full and final authority over the Union.
- (9) Authority of highest level legislative, executive, and administrative bodies of Union not directly accountable to membership.
- (10) Emasculation of democratic safeguards.

- (11) Special interest wheeling and dealing.
- (12) Inadequate time for membership to study deal before voting on it.
- (13) Selection of Lybrand, Ross Bros. and Montgomery to conduct and certify balloting.

more than 5 percent of the real substance of the package. The difference is more like 180°—and you damn well know it.

Your mouthing about "JOB SE-CURITY, UNION DEMOCRACY AND DEMOCRATIC SAFE-GUARLS, UNITY AND STRENGTH OF STRUCTURE AND PROTECTION OF MEM-BERSHIP ASSETS will not stand searching examination.

I demand that this letter be published in THE MASTER, MATE & PILOT before the Ballots go out so that the membership gets the facts about why seven Delegates voted against the Convention proposal.

Harold H. Sahlin #11465 Franks by:

D. C. Dunn #10119
D. R. Sigafus #4032
J. P. Sullivan #10333
Michael K. Owens P-12152
(The article above was written
by a rank and file East Coast
delegate to the New Orleans Constitutional Convention).

Dear Sir:

The stench of the ur lemocratic procedures of President O'Callaghan appointing a by-laws committee emanating from the socalled Consolidation Convention at New Orleans in January, 1970, is overwhelming.

The haste in ramming this merger through by an immediate Ballot before the Membership has a chance to study the Convention proposals at leisure and without a thorough opportunity of dissenting members to present their opposition to the merger through various communications. In the letter from O'Callaghan to membership dated February 23rd, the letter states that incomes from Initiations will cease until the membership job ratio is realized necessitating a dues increase. In close examination of the proposed By-Laws of the Offshore Division, Article II, Section 1-b pertaining to a 1.5 members to 1 job ratio, the last sentence reads: "The ratio described herein shall be subject to annual review and may be amended by the General Executive Board" nullifies the Article II Section b. How long do you think the General Executive Board will hold to the 1.5 ratio? If you go by past records and facts you will see that the interest of most of your Officials in dues revenue in this proposal of 11/2 to 1 ratio is just another carrot and stick approach.

On another subject, the dumping of Jess Favela as Wilmington Rank and File Member of the Negotiating Team was unfair. He was one of the four Rank and File on the Team who have stuck by the membership in not settling quick and cheap. Green from Portland resigned under

pressure, so it looks like you are going to get a cheap Contract for the Members.

I recommend a vote no in the event it turns out that way. Harold H. Sahlin = 11465 Franks by:

> Peter F. Spencer #11652 Scott F. Abrams #11727

Letter to Editor for Membership Comments.

Submitted by:

H. Sahlin No. 11652 D. C. Dunn No. 10119 H. C. Carmichael No. 10639 W. Beebe No. 8170 H. J. Andreassen No. 11803 G. O. Christensen

(An article in the New York

Which is the more importantcatching the organized criminals or the white collar criminals? And which is most difficult?

MORGENTHAU: I think both are extremely important, but in many ways it's easier for the public to focus on efforts against organized crime than it is against white collar crime, because white collar crime is so often committed by otherwise respectable people like bank officers and union leaders.

I think that one of the most difficult cases we had was when a grand jury returned an indictment against two of the national partners and an associate of Lybrand, Ross Brothers & Montgomery, which is one of the big

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Membership Comments

Continued from Page 3-

eight accounting firms—the second largest firm in the country. They were charged with knowingly certifying a false and fraudulent balance sheet of a company listed on the New York Stock Exchange.

Very shortly after the report containing that balance sheet was sent to the stockholders, the company went into bankruptcy. And we received an awful lot of criticism from the accounting profession and from some lawyers, saying that we were being too harsh in holding these people responsible in a criminal case. We reviewed that, and we worried about it We spent a tremendous amount of time considering that case, and we realized that this was a difficult step, and this was a pioneering step to take.

But we just felt that when accountants break the law and they do it knowingly and they certify a commercial balance sheet, they should be held responsible in a criminal case just the way somebody is who robs a bank or steals a car.

We were told by the distinguished counsels for those defendants that we had no case and that we should exercise our discretion and dismiss the indictments and so forth.

But we went ahead and these men were convicted and the case was affirmed in the (United States) Court of Appeals.

I'd say, more generally, that we brought a large number of cases against lawyers and accountants — probably in the neighborhood of +00. And when I came into office, the general policy was not to indict and try lawyers and accountants on the

ground they are professional people and that this would be too harsh a step. But I felt—and the members of my staff felt—that this was necessary in order to provide the deterrent to stop other people from committing these kinds of crimes, and that we've just got to meet this new kind of crime if we're going to say nobody's beyond the reach of the law.

The following statements are excerpted from the transcript of the Constitutional Convention of Jan. 31, 1970):

CAPTAIN SORIANO: I make a motion that we designate Lybrand, Ross Bros, & Montgomery, at No. 2 Broadway, as the impartial agency for this ballot.

CAPTAIN CROOKS: Would the delegate making the motion spell the name of the firm?

CAPTAIN SORIANO: Lybrand, L-y-b-r-a-n-d, Ross, R-o-s-s, Bros. & Montgomery, M-o-n-tg-o-m-e-r-y, No. 2 Broadway, Certified Public Accountants, one of the big ones in the United States.

PRESIDENT O'CALLAGHAN: Was there a second?

CAPTAIN JONES: I second the motion.

PRESIDENT O'CALLAGHAN:
Carried. —(Page 132)

CAPTAIN DURKIN: I want to be certain, Because I am not certain, to my knowledge, having used Lybrand, Ross Bros, & Montgomery, who have offices all over the West Coast and offices in Houston and Chicago, and all over the United States, we have used them.

PRESIDENT O'CALLAGHAN: You are correct.

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THE SEXTANT

It is my regre table duty to report to you that by Constitutional Convention action of Saturday, Jan. 31, 1970, the first concrete step has been taken to scrap union democracy in MM &P. The delegates to this convention, by their majority per capita vote of 7870 to 2861, steamrolled over such a raw deal to restructure the Union that if it is ratified by membership referendum, abosolue control will be turned over to the president and a handful of officials.

By this dubious action these delegates invite the membership to abdicate hard fought for democratic rights and procedures that required years and years to achieve. As an observer of these convention proceedings. I was at least gratified to see the five delegates from Local 88; the Great Lakes District Local 47 delegate; and the San Francisco Inland Local 40 delegate hit the convention floor to vigorously oppose the vote against this power grab.

I was distressed. Brothers, to have to sit there and not hear one word from our Local 15 delegates in protest against demise of membership control of our Union and amazed to see all Local 90 delegates go along with the deal

These constitutional shenanigans call for an offshore dues increase to \$300 per annum. Inland and pilot members will pay \$120. Compare your earnings with the earnings of pilots. This doesn't make much common sense when you consider that Union pressure got the N.Y. Sandy Hook pilots a 50 per cent raise last year. Are you making \$40,000?

THE WAGE increase planned for certain officials, high salaried presidential appointees, whose main job will be to tighten the screws on political control, and other extravagant excesses of top heavy bureaucracy will cost this membership a bundle if we are suckers enough to go for this proposition. They intend to increase the International President's salary to \$40,000, International Secretary - Treasururer's to \$35,000 and put the International Executive Vice-President on the payroll at \$35,000. Stegall, Jones, Weinstein, Durkin and King expect to be rewarded to the tune of a \$30,000 plus figure. There will be other emolu-

I was unable to learn what happened to the \$0.15 per man day for hiring hall operation owed by the shipowners or a "me too." There is something queer about this. The top brass got visibly embarrassed when the question was brought up in committee. Stegall should claim at least \$30,000 for Local 15's share and set it aside as a local asset the International can't grab in consolidation — if that goes through.

The new name for the old IEC will be General Executive Board. Instead of being comprised of the Executive Officer of each Local for purposes of voting membership per capita, its makeup will be International President. International Executive Vice-President. International Secretary-Treasurer, together with the three Vice Presisdents of the Offshore Division and the Vice President of any Division that is fully formed at a later date. The Executive Officer of each inland and pilot local will be on hand until such time as they form divisions

NOW GET this, Brothers, and hang on to your hats. The International President. International Vice President and International Secretary Treasurer will whack up the offshore per capita vote with the three Offsshore Vice Presidents. A combination of any four of these individuals will pack enough voting power to control the Union and none of them will be directly accountable to the membership for their actions.

When I say directly accountable. I mean there will be no provision for the actions of the officials of that executive body to be approved, rejected or amended by membershsip meeting action. They will all be elected by national referendum after the transitional period of going from nine (9) offsshore locals to one big offshore local. Under this set-up the only control we will have over these individuals is the possibility, whatever that is, of voting them out of office. When you realize the International President is to be named Editor of the International rag and will be given a free hand in its use you should get the picture. The provision to fill vacancies of International Officers by General Executive Board action, instead of by membership referendum, will be further denial of the right of the membership to choose its leaders in a democratic fashion.

The new appointive authority of the President: his freedom to get on a government payroll while remaining on the MM&P payroll: a Tee hand in assigning subordinate international officials to duties and at locations at his own pleasure; authority to appoint organizers, representatives, assistants, counsel, ac-

-Continued on Page 6

DEFENDANT'S EXHIBIT P

Continued from Page 5—
countants, and other professional personnel and to fix their
compensation all spells out the
strongest possible centralized
control and a strangle hold over
the Union. The delegates who
want the President to have such
power are not likely to curb his
use of it.

THE FACT that the same delegates who voted to scuttle membership control also voted Moe Weinstein on to the ballot committee should not surprise you. They again rejected a proposasl by Local 88's delegation that American Arbitration Association conduct the balloting. Why is this gang afraid of a tightly controlled referendum?

I must also report that a special committee was selected by International President O'Callaghan to meet after the Convention to draw up a set of by-laws to fit the restructuring of the Offshore Locals. This committee is comprissed of only one delegate who opposed the terms of the consolidation proposition.

The Local 88 Delegates protested against the Convention "voting on a structural change without by-laws under which it is to be implemented" and they protested "denial of the right of offshore local delegate to vote on such by-laws as a delegate to (the) convention"—or the formulating of such by-laws after the close of the convention.

DELEGATE SHELDON protested the seating of anyone as a delegate to represent more than one local of the Organization. Two delegates, Scott (MM&P Local 24/AMW8) and Beirne (MM&P Local 5'AMW5) were permitted to violate the Constitution in that regard.

Brother Lloyd Sheldon told the Convention:

"Consolidation of membership is one thing, consolidation of the power of a handful of ofor one official . . . ficials . is sosmething else. . . . The restructuring change contemplated by the proposal before this Convention will dilute the ability of the membership to exercise full and final control over the Union .. Where the highest level legislative, executive and administrative bodies of any union are not directly accountable to the membership for their actions, that membership must lose control."

The Local 88 delegation made it clear on the convention record that the mandate for an off-shore division was not a mandate to consolidate on any terms or to surrender the democratic process and its safeguards.

Submitted by:

/s/ Harold H. Sahlin. No. 11465

Franks by:

/s/ Wm. M. Beebe, No. 8170

's' Ernest J. Kaulfuss. No. 3897

/s/ M. Krainer, No. 3381

/s/ Daniel E. Trujillo. No. P-12260

/s/ D. C. Dunn, No. 10119 JUDGMENT OF HON. WHITMAN KNAPP, U.S.D.J., ENTERED August 8, 1975 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Plaintiffs,

-----x

-against-

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer or WILLIAM M. CALDWELL, as Vice President of INTERNATIONAL ORGALIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO,

Defendants.

-----X

70 Civ. 1279 WK

JUDGMENT

This case was tried on January 8 and 9, 1973, before the Court sitting without a jury. Following presentation of the plaintiff's case, on motion of defendants the case was dismissed. Upon appeal to the United States Court of Appeals for the Second Circuit, the dismissal was reversed and the cause remanded for further proceedings. Trial was resumed on July 2, 1975 and the case completed.

Now, upon consideration of the evidence, and upon consideration of the arguments submitted orally and in writing

basic and fundamental changes in the structure of the union have taken place, and in the exercise of the equitable powers and jurisdiction of this Court, the following remedy be carried out:

- (1) The Constitution that was proposed for adoption in the said 1970 referendum, as amended to date, hereinafter referred to as the "present Constitution", together with the existing Constitutions and/or By-Laws of the Union's subordinate bodies, shall, as so amended and as may in the future be amended, remain in force for a period of one year from the date of entry of this judgment; and
- (2) The defendants shall promptly cause the said present Constitution to be sent out to defendants' membership for approval on a "yes" or "no" vote, up a ballot in the form annexed hereto as Schedule "A"; and
- (3) In the course of such referendum, the plaintiffs and other members opposed to adoption of the present Constitution shall be given a fair and reasonable opportunity to express their views concerning the same to their fellow members and to have their views published in the official newspaper of defendants, in conformity with the provisions of the present Constitution with respect thereto; and
- (4) In the event that the membership approves the present Constitution, the same shall continue to remain in force and effect, as amended and as it may be amended together with the existing Constitutions and/or By-Laws

of the Union's subordinate bodies, and this case shall be thereupon ended subject to application by plaintiffs and/or other members of defendant Union challenging the fairness of the referendum or of its procedures and to further order of this Court upon any such application; and

- (5) In the event that the membership disapproves or fails to approve the present Constitution, then the defendants shall promptly convene a special Constitutional Convention which shall draft a new proposed Constitution, and the defendants shall submit the same to the membership for approval in a second referendum vote, also on a "yes" or "no" basis; and
- vote, the membership shall approve the new proposed

 Constitution, then upon the expiration of one year from

 the entry of this judgment, or one month from the completion

 of such referendum, whichever first occurs, the new proposed

 Constitution shall come into force and effect and the

 existing Constitutions and/or By-Laws of all of the Union's

 subordinate bodies shall continue to remain in full force

 and effect, but shall be deemed to be amended pro tanto,

 to conform to the provisions of such newly ratified Con
 stitution; and
- (7) In the event that the membership shall not, within one year from the entry of this Judgment, have approved in referendum vote as above set forth, either the present Constitution or the proposed new Constitution,

or shall, having disapproved or failed to approve the present Constitution, disapprove the proposed new Constitution, then, either one month after disapproval of the proposed new Constitution or one year following entry of this Judgment, whichever may sooner occur, the Constitution and the local union Constitutions and/or By-Laws that were in effect prior to October 1, 1970, shall return to full force and effect, as amended or as they may be amended; and

- above, any resolution providing for the payment of additional dues, duly adopted by any subordinate body of defendant union and duly ratified by the body's membership subsequent to October 1, 1970, and not repealed by the membership referendum of such subordinate body, shall continue in effect and shall be deemed an amendment to the Constitution and/or By-Laws of each restored local union whose membership, as of the date of the entry of this Judgment, constitutes a portion of such subordinate body; and
- (9) In the event of appeal from this Order and Judgment, the commencement of the one year "status quo"period contemplated herein shall be stayed until the date of appellate determination or exhaustion of appellate procedures; and
- (10) The Court shall retain jurasdiction of this cause and may make any modification or this Judgment

by counsel for the plaintiffs and by counsel for the defendants, it is found and determined that the defendants failed and refused to permit plaintiffs to have access to the defendants' membership lists for the purpose of distributing their views opposing the proposed Constitution; and further found and determined that the newspaper of plaintiffs' own local union, which contained arguments in opposition to the proposed Constitution, was not so widely distributed to defendants' members as to overcome the effect of defendants' failure to permit plaintiffs to have access to the defendants' membership lists, and for that reason the said referendum was not conducted in accordance with the requirements of the Labor-Management Reporting and Disclosure Act; and it is therefore

ORDERED, ADJUDGED AND DECREED that plaintiffs have judgment against defendants declaring that the referendum conducted in 1970 among defendants' metership concerning a proposed new Constitution was not in conformity with the requirements of the LMRDA, and that the Constitution proposed for adoption in such referendum was not lawfully adopted; and it is further

ORDERED. ADJUDGED AND DECREED that, in yiew of the fact, which I find, that the Constitution that was proposed for adoption in the said 1970 referendum has in fact been in force, though never lawfully adopted, from 1970 to this date, and that during such period of time many

and/or any further Order that may be appropriate either upon application of any plantiff or of lefendant or of any member of defendant or upon its own motion, and grant whatever relief or further remedy may be appropriate.

Dated: New York, New York August 5, 1975

> /s/ Whitman Knapp U.S.D.J.

Judgment Entered - 8/8/75
/s/ Raymond F. Burghardt
Clerk

United States Court of Appeals

For the Second Circuit

Docket No. 75-7504

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Plaintiffs-Appellees,

against

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALD-WELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO,

Defendant-Appellant.

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK

KENDER A. PEJANIC, being duly sworn, deposes and

says, that he is over 18 years of age. That on the 5 TH day of

NOVEMBER, 1975, he served ONE COPY of

the attached VOINT APPENDIX on

the attorney for the PLAINTIFFS-APPELLEES

herein by depositing the same, properly enclosed in a securely sealed



post-paid wrapper , in a U. S. Post Office at 90 Church Street, New

York City, directed to said attorney at 401 BROADWAY

NEW YORK, NY. 10013

thes being the place where HE maintain an offices for the

regular transaction of business, and the last address mentioned in

the papers last served by MARVIN SCHWARTZ

Sworn to before me this

S day of Nov.

, 1975.

Notary Public State of New York

No. 24-2026075

Commission Expires March 20.

Commission Expires March 30, 197



